

ECONOMIC GROWTH & DEVELOPMENT COMMITTEE

EDC AGENDA

SEPTEMBER 2, 2015

Committee Members: Supervisors Taylor, Monroe, Wood, Beaty and Strough

- I. Committee meeting called to order by Chairman
- II. Motion to approve the minutes of the prior meeting -
- III. Action Agenda/New Business Items:
 1. Authorizing the Chairman of the Board to sign in acceptance of Warren and Washington Counties Industrial Development Agency (WWIDA) Resolution No. 15-09.
- IV. Referrals/Pending Items:

None.
- V. Discussion Items:
 1. Ed Bartholomew, President of Warren County EDC, to provide updates on any new/ongoing projects or initiatives.
- VI. Privilege of the Floor to discuss any additional items to come before the Committee
- VII. Motion to adjourn

Attachments:

1. Cover letter from FitzGerald Morris Baker Firth and WWIDA Resolution No. 15-09.



FitzGerald Morris
Baker Firth

Kara I. Lais
Partner
kil@fmbf-law.com

August 18, 2015

Hon. Kevin B. Geraghty, Chairman
Warren County Board of Supervisors
Municipal Center
1340 State Route 9
Lake George, New York 12845

Hon. James Lindsay, Chairman
Washington County Board of Supervisors
Municipal Center – Bldg. B
383 Broadway
Fort Edward, New York 12828

Re: WWIDA – 354 Broadway, LLC & Price Chopper Operating Co., Inc. (“Market 32 Project” / Town of Fort Edward)

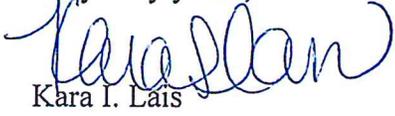
Gentlemen:

On behalf of the Counties of Warren and Washington Industrial Development Agency, I am writing to you to request your agreement and consent to the attached Resolution No. 15-09 of the Counties of Warren and Washington Industrial Development Agency (the “WWIDA”), adopted on August 17, 2015 at a regular meeting, after a duly scheduled and conducted public hearing on the same date. The Agency has determined that this Project meets the retail exception criteria since the Market 32 Project is considered located in a “highly distressed area” since it is located in an area that was previously designated as an empire zone under Article 18-B of the General Municipal Law, therefore, a “project” eligible for assistance under New York State statutes.

As you know New York State legislation, adopted on March 28, 2013, amended Article 18-A of the General Municipal Law governing IDAs to require the consent of the Chief Executive Officer of the jurisdiction(s) in which the specific industrial development agency operates with regard to this exception to the prohibition of assistance to retail. Please see the actual resolution for a description of the project and the Agency’s determination.

If you are in agreement with the Agency's determination please sign the copy of the resolution enclosed and return to us in the enclosed envelope. If you have any additional questions please do not hesitate to contact us.

Very truly yours,



Kara I. Laïs

KIL/dld

cc: Harold G. Taylor, Chairman, WWIDA
Deborah Mineconzo, WWIDA
Martin Auffredou, Esq., Warren County Attorney
Roger Wickes, Esq. Washington County Attorney

Resolution No. 15 - 09
Adopted August 17, 2015

Introduced by Bruce Ferguson
who moved its adoption.

Seconded by Lou Tessier

RESOLUTION TAKING PRELIMINARY ACTION TOWARD UNDERTAKING A CERTAIN PROJECT, AS DEFINED HEREIN, APPOINTING PRICE CHOPPER OPERATING CO., INC. AND 354 BROADWAY, LLC, AGENTS OF THE AGENCY FOR THE PURPOSE OF CONSTRUCTING AND EQUIPPING THE PROJECT FACILITY (AS DEFINED HEREIN) AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BY AND AMONG THE AGENCY, PRICE CHOPPER OPERATING CO., INC. AND 354 BROADWAY, LLC

WHEREAS, the Counties of Warren and Washington Industrial Development Agency (the "Agency") is a body corporate and politic duly organized and existing under Sections 856 and 890-c of the General Municipal Law ("GML") of the State of New York (the "State"), with its principal place of business at 5 Warren Street, Glens Falls, New York; and

WHEREAS, 354 BROADWAY, LLC, (the "Developer"), having a current address at 170 West 74th Street, New York, New York 10023 is a limited liability company created pursuant to the Laws of the State of New York; and

WHEREAS, PRICE CHOPPER OPERATING CO., INC. (the "Company"), having a current address at 461 Nott Street, Schenectady, New York 12308, is a corporation created pursuant to the Laws of the State of New York; and

WHEREAS, the Developer, in conjunction with the Company, has submitted an Application for Assistance ("Application") requesting that the Agency undertake an industrial development project (the "Project I") consisting of (i) the acquisition of an interest in a certain commercial parcel of land located at 354 Broadway in the Town of Fort Edward, County of Washington, State of New York (the "Land"); (ii) the construction and equipping of a 40,315 +/- square foot supermarket located on the Land (the "Facility"); (iii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" together with the Land and the Facility, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iv) the lease of the Project Facility to the Developer, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended; and

WHEREAS, the Company, in conjunction with the Developer, has submitted an Application for Assistance requesting that the Agency undertake an industrial development project (the "Project II") to consist of: (i) the construction and equipping of a 40,315 +/- square foot supermarket located at 354 Broadway in the Town of Fort Edward, County of Washington, State of New York (the "Facility"); (ii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" and together with the Facility, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iii) the entering into of an

agency agreement with the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the “Act”), as amended; and

WHEREAS, Project I and Project II shall be collectively referred to as the “Market 32 Project”; and

WHEREAS, under Article 18-A of the General Municipal Law (the “Act”), the Legislature of the State of New York has granted the Agency the power and authority to undertake the Market 32 Project; and

WHEREAS, the Market 32 Project will require the Agency and the Developer to enter into an agreement whereby the Developer will acquire, by deed or by lease, and construct the Project Facility and the Agency will lease or sell the Project Facility to the Developer with an option to buy; and

WHEREAS, the Market 32 Project will also require the Agency and the Company to enter into an agreement whereby the Company will acquire and install the Project Equipment and the Agency will lease the Project Equipment to the Company; and

WHEREAS, the Agency is a state agency under Section 8-0105 of the Environmental Conservation Law of the State of New York and the Project is an action under Article 8 of said law (Article 8 hereinafter being referred to as the “State Environmental Quality Review Act” or “SEQRA”) and under 6 NYCRR Part 617, §§ 617.2(b) and 617.3(g); and

WHEREAS, the Developer and the Company have submitted to the Agency, and the Agency has reviewed information needed to determine whether or not the Market 32 Project will have a significant impact on the environment; and

WHEREAS, the Developer and the Company have submitted to the Agency, and the Agency has reviewed, information needed to determine whether or not the Market 32 Project will have a significant impact on the environment; and

WHEREAS, the acquisition, construction and installation of the Project Facility has not been commenced, and the Agency has not yet authorized the Market 32 Project; and

WHEREAS, the Agency is required to conduct a public hearing pursuant to Article 18-A of the New York State General Municipal Law (the “Law”) before taking official action relating to the Project; which public hearing took place on August 17, 2015 at 10:00 am in the Town of Fort Edward, New York after due notice was provided and published.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. Findings. The Agency has reviewed the Applications together with the environmental assessment form to determine compliance with the requirements of the Act and based on the representations of the Developer and the Company to the Agency in said Applications and elsewhere, the Agency hereby makes the following findings and determinations

with respect to the Project:

(A) The Market 32 Project is a permitted project under the Act; and

(B) Undertaking the Market 32 Project will advance the Agency's corporate purposes by leading to the creation of job opportunities for the inhabitants of the Counties of Warren and Washington, New York and the State of New York. The Market 32 Project will also promote the health, prosperity, and economic welfare of the inhabitants of the Counties of Warren and Washington and the State of New York and improve their standards of living; and

(C) (i) The Market 32 Project is an "Unlisted Action" under SEQRA for which the Town of Fort Edward Planning Board (the "Planning Board") has acted as lead agency. On or about February 25, 2015 the Planning Board reviewed the Project Site Plan Application submitted on behalf of the Developer and the Company and approved said Site Plans, and issued its Negative Declaration that the Market 32 Project will not have a significant impact on the environment; and (ii) the Agency has thoroughly reviewed the environmental assessment form, negative declaration and related supporting information presented to the Agency within the Developer's and Company's Application for Assistance in order to determine whether the Market 32 Project might have any potential significant adverse impacts upon the environment. After conducting this review, the Agency has determined that the acquisition, construction and equipping of the Project Facility are consistent with social, economic and other essential considerations and will not result in any significant adverse impacts on the environment. The Agency hereby ratifies the findings and Negative Declaration of the Town of Fort Edward Planning Board. In doing so, the Agency satisfies the requirements of Part 617 of Title 6 of the New York Code of Rules and Regulations and no further SEQRA review is required for the Project; and

(D) It is in the public interest for the Agency to undertake the Project on behalf of the Developer and the Company; and

(E) The completion of the Market 32 Project will not result in the removal of a commercial, industrial or manufacturing plant of the Developer or Company from one area of the State of New York to another area of the State of New York. Further, the completion of the Market 32 Project will not result in any loss of jobs and all existing jobs will be retained nor will the completion of the Market 32 Project result in the abandonment of one or more plants or facilities of the Developer or the Company, or any other proposed occupant of the Facility located within the State of New York.

SECTION 2. Preliminary Agreement. The proposed preliminary project agreement by and between the Agency, the Developer and the Company (the "Preliminary Agreement"), as presented to this meeting, is hereby approved as to substance and form. The proposed agreement outlines the Agency's, the Developer's and the Company's rights and duties with respect to the undertaking of the Market 32 Project. Subject to such changes as the Chairman of the Agency, upon advice of counsel, may reasonably deem necessary, the Chairman is authorized to execute the Preliminary Agreement, and the Secretary of the Agency is authorized to affix a facsimile of the corporate seal thereto and to attest to the same. Execution and attestation shall be conclusive evidence that the Agency has approved the Preliminary Agreement.

SECTION 3. Description of Project. Subject to the conditions set forth herein and in Section 4.02 of the Preliminary Agreement, the Agency shall:

- (A) acquire an interest in, construct and install the Project Facility; and
- (B) lease or sell the Project Facility to the Developer pursuant to an agreement or agreements whereby the Developer will obligate itself, among other things, to undertake the Market 32 Project on behalf of the Agency; and
- (C) lease the Project Equipment to the Company pursuant to an agreement whereby the Company will obligate itself, among other things, to undertake the Market 32 Project on behalf of the Agency.

SECTION 4. Developer and Company Appointed Agents of Agency.

(A) The Developer and Company are hereby appointed the true and lawful agents of the Agency to:

- (1) construct and install the Project Facility;
- (2) make, execute, acknowledge, and deliver all contracts, orders, receipts, instructions, and writings needed to complete the Market 32 Project; and
- (3) do all other things requisite and proper for the completion of the Market 32 Project.

(B) The Developer and the Company are authorized to proceed with the acquisition, construction and installation of the Project Facility, subject to receiving appropriate municipal approvals needed prior to commencement of construction, and to advance such funds as may be necessary to accomplish these goals.

(C) The Developer and the Company are also authorized to appoint third party agents to undertake the Market 32 Project and thereby make available to such third party agents an exemption from New York State sales and use taxes in connection with undertaking the Market 32 Project. This provision is subject to the Developer and/or the Company entering into an Agent Agreement with the Agency.

SECTION 5. §144 Election. Not Applicable.

SECTION 6. Bond Counsel. Not Applicable.

SECTION 7. Document Preparation. Counsel to the Agency is hereby authorized and directed to cooperate with counsel to the Company, as well as all other necessary parties, in order to prepare the documents needed to undertake the Market 32 Project.

SECTION 8. Payment in Lieu of Tax (PILOT) Agreement. Except as otherwise set forth herein, the Agency's approval is subject to the Developer entering into an enhanced PILOT Agreement with the Agency whereby the Developer agrees to make payments in lieu of taxes in an amount pursuant to the Agency's Uniform Tax Abatement Policy for a term of 15 years, as it may be enhanced, in any given year as if the Developer were the owner of the Project and not the Agency. The following enhanced schedule of payments is approved: 75% tax exemption on

improvements for years 1 through 5; a 50% tax exemption on improvements for years 6 through 10; and a 25% tax exemption on improvements for years 11 through 15. The Agency's approval is also subject to the approval of the Town of Forward, said approval was granted by the Town Board of the Town of Fort Edward on August 17, 2015, and to the Developer agreeing to the terms of the Agency's Recapture Policy.

SECTION 9. Public Inspection. A copy of this resolution and a copy of the Developer's and Company's Applications for Assistance, together with all other application materials not protected under applicable Freedom of Information Laws, shall be placed on file in the office of the Agency. Such documents shall be available for public inspection during normal business hours.

SECTION 10. Distribution of Resolution. The Chairman of the Agency is hereby authorized to distribute copies of this resolution to the Developer and to the Company and all other persons requesting it.

SECTION 11. Public Hearing.

(A) The Agency, after duly published notice, conducted a joint public hearing pursuant to Article 18-A of the New York State General Municipal Law (the "Law") on the 17th day of August, 2015, at 10:00 a.m., local time, at the Town Hall of the Town of Fort Edward located at 118 Broadway, Fort Edward, New York 12828, in connection with the Market 32 Project.

(B) In accordance with Section 859-a of Article 18-A of the General Municipal Law, the financial assistance contemplated hereunder by the Agency is hereby ratified.

SECTION 12. Retail Facility. At least one third of the total project costs for the Market 32 Project will be used for the development of a retail facility. Pursuant to Section 862 of the General Municipal Law, financial assistance from the Agency is prohibited for retail projects unless one of the following exceptions applies: (A) a tourism destination project; (B) a project located in a highly distressed area; and/or (C) a project that provides a product or service to the area that otherwise would not be available. In accordance with *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*, NYS Department of Taxation and Finance, dated February 7, 2017 (TSB-M-14(1)(S)), the Market 32 Project meets (B), herein, since it is considered a highly distressed area since the Project Facility is located in an area that was previously designated as an Empire Zone under Article 18-B of the General Municipal Law.

SECTION 13. Contingency. This resolution is contingent upon the approval of the Chief Executive Officers of the Counties of Warren and Washington pursuant to Section 862(2)(c) of the General Municipal Law.

SECTION 14. Further Action. The Chairman of the Agency is authorized to take such further action as shall be necessary to give effect to and implement this resolution.

SECTION 15. Effective Date. This resolution shall not take effect until the Developer and the Company and the Center jointly deliver to the Agency of a fully executed Preliminary

Agreement, as defined herein, together with a \$25,000.00 security deposit.

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

VOTING:	AYES	NAYS	ABSTAIN	ABSENT
Harold G. Taylor	1			
Bruce A. Ferguson	1			
Joseph P. LaFiura				1
Louis Tessier	1			
John Millett, Sr.				1
James T. Lindsay	1			
Dave O'Brien	1			
John W. Weber	1			
John S. Kvocka				1
Matthew Simpson	1			
TOTALS	7	0	0	3

The foregoing resolution was thereupon declared duly adopted.

Confirmed by:

Kevin Geraghty, Chairman of the
Warren County Board of Supervisors
Date: _____

James Lindsay, Chairman of the
Washington County Board of Supervisors
Date: _____

