

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

TOWN OF BETHLEHEM
Albany County - New York
INDUSTRIAL DEVELOPMENT AGENCY

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Regular Meeting Minutes
Wednesday, July 26, 2017
8:00 AM
Town Hall Auditorium

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 8:00 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	
Tim McCann	Board Member/Secretary	Present	
Victoria Storrs	Board Member/Assistant Secretary	Present	
Sandra Shapard	Board Member	Present	
Tim Maniccia	Board Member	Present	
David Kidera	Board Member	Present	
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	

II. Minutes Approval

1. Friday, April 28, 2017

RESULT: ACCEPTED [UNANIMOUS]
MOVER: Sandra Shapard, Board Member
SECONDER: Victoria Storrs, Board Member/Assistant Secretary
AYES: Venezia, Richardson, McCann, Storrs, Shapard, Maniccia, Kidera

2. Wednesday, June 28, 2017

RESULT: ACCEPTED [UNANIMOUS]
MOVER: Tim Maniccia, Board Member
SECONDER: Sandra Shapard, Board Member
AYES: Venezia, Richardson, McCann, Storrs, Shapard, Maniccia, Kidera

III. Reports of Committees

- **REPORT OF THE GOVERNANCE COMMITTEE (RICHARDSON)**

The Committee discussed Suffolk County IDA's report on their self-review of effectiveness and concluded Agency reporting is satisfactory with a multi-year comparison. Members who haven't participated in ABO training in over 5 years are encouraged to retrain.

IV. Communications

None.

V. Old Business

- **PLANNING BOARD UPDATE (LESLIE)**

Air Products under Planning Board review and approval might be scheduled at the last week in August or first week in September. Port Road South will likely receive approval the first meeting in August.

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

Port Road South will meet about HCR grant opportunities for the building. TACS HCR grant application is in going forward. The available properties list has been updated online - current inventory is low.

- **COLUMBIA 15 PROJECT (CONNOLLY)**

The developer advises they are still looking for a tenant.

- **SAE SUN (MONOLITH) PROJECT (JENNIFER PICKETT)**

Monolith is working with Trustco which is still coordinating the paperwork.

- **AIR PRODUCTS PROJECT (CONNOLLY/SCOTT)**

Dave McCarthy reported the project is on track with approvals for a possible September construction start.

- **11 VISTA/CPI BERK III & IV (SCOTT)**

The document is prepared and should be ready for signature by the next regular meeting.

- **10 VISTA/RETAIL (SCOTT)**

The documents are ready for signature.

- **COEYMANS RECYCLING (SCOTT)**

The company/project doesn't need any action on the part of the Agency.

VI. New Business

- **FINANCIAL STATEMENTS 6/30/17 (MAIKELS)**

Mr. Maikels reported on the financials as of June 30, 2017. Fees from project closings will off-set deficits in the budget.

- **APPLICATION EAST COAST NITROGEN LLC FOR ASSIGNMENT, ASSUMPTION, CONSENT FOR FINANCIAL ASSISTANCE DOCUMENTS TO BE SIGNED BY AIR PRODUCTS AND CHEMICALS, INC. AFTER CONSTRUCTION COMPLETION (DAVID MCCARTHY/STEPHEN REILLY)**

The application is for the same project approved by the Agency for Air Products. Linde was added as a partner so the previous approval is to be assigned to the newly formed joint venture East Coast Nitrogen. There are no changes to costs. The job number increased by 22 Linde jobs to a total of 66 jobs.

- **A. LETTER 7/17/17 FROM EAST COAST NITROGEN TO CONNOLLY SUMMARIZING APPLICATION**

- **B. AGENCY FEE (CONNOLLY)**

After a brief discussion, a fee of \$2,500 was proposed.

Motion To: Approve Fee

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

Upon motion by Mr. Richardson, seconded by Ms. Storrs, will all members in agreement, the Agency approved a fee of \$2,500 for the assignment.

- **C. RESOLUTION (SCOTT)**

Motion To: Adopt Resolution

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

RESOLUTION APPROVING THE MODIFICATION OF THE TERMS OF THE AIR PRODUCTS AND CHEMICALS, INC. PROJECT TO PROVIDE FOR THE ASSIGNMENT OF THE PROJECT TO EAST COAST NITROGEN COMPANY LLC.

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, in February, 2017, Air Products and Chemicals, Inc. (the "Company"), a business corporation duly organized and validly existing under the laws of the State of Delaware, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following:

(A) (1) the acquisition of an interest in all or a portion of an approximately 26.908 acre parcel of land

located at 461 River Road in the Town of Bethlehem, Albany County, New York (the "Site Land"),

together with the existing improvements located thereon containing approximately 7,000 square feet in

the aggregate (the "Existing Facility"), (2) the construction on the Site Land of certain improvements

containing in the aggregate approximately 5,000 square feet of space (the "New Facility") (the Existing

Facility and the New Facility hereinafter collectively referred to as 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 Site Land, the Facility, and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company and operated as an industrial facility for the production and distribution of liquid nitrogen, liquid oxygen and liquid argon and other directly and indirectly related uses; (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 property 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 February 24, 2017 (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 Executive Director 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 March 10, 2017 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 March 10, 2017 on a bulletin board located outside the Town Clerk's office located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York and on the Agency's website, (C) caused notice of the Public Hearing to be published on March 11, 2017 in the Albany Times Union, a newspaper of general circulation available to the residents of the Town of Bethlehem, Albany County, New York, (D) conducted the Public Hearing on March 22, 2017 at 5:00 o'clock p.m., local time in the Auditorium of the Town of Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany 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 March 23, 2017 (the "SEQR Resolution"), the Agency determined (A) to conduct an uncoordinated review of the Project, (B) that the Project is an "Unlisted action" which will not have a significant effect on the environment and, therefore, that an environmental impact statement is not required to be prepared with respect to the Project, and (C), as a consequence of the foregoing, to prepare a negative declaration with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on March 23, 2017 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter

into a lease agreement (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, the Agency and the Company have not yet completed the execution and delivery of the Lease Agreement and the other Basic Documents; and

WHEREAS, the Company has since informed the Agency that the Company plans on entering into a joint venture with Linde North America and, in connection with such joint venture, to form East Coast Nitrogen Company LLC (the "New Company"); and

WHEREAS, the Company expects to be responsible for the acquisition, construction and installation of the Project Facility and, following the completion of the Project, the Company has further informed the Agency that it would like to assign its interest in the Project Facility to the New Company;

and

WHEREAS, the draft Lease Agreement provides that the 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, the Company has requested (the "Request") the Agency to provide consent to the proposed assignment to the New Company prior to the date of the execution and delivery of the Lease Agreement and the other Basic Documents (the "Closing Date"); and

WHEREAS, the Company has provided to the Agency a revised Application dated July 17, 2017 (the "New Application") describing the Request and the Project, as modified to reflect the involvement of the New Company, in order to facilitate the Request and the Agency's review of the Request; 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 Request; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Request in order to make a determination as to whether the Request is subject to SEQRA, and, based on discussions with Agency Special Counsel, it appears that the Request constitutes a Type II 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 New Application and discussions with Agency Special Counsel, the Agency hereby makes the following determinations:

(A) The Request constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c)(23) and (26), and therefor that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request.

(B) That since compliance by the Agency with the Request will not result in the Agency providing more than \$100,000 of new or additional "financial assistance" (as such quoted term is defined in the Act) to the New Company, 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 the Request and consents to the inclusion in the draft Lease agreement of an assignment provision that provides as follows: that the Company will be responsible for the acquisition, construction and installation of the Project Facility and, following the completion of the Project, will permit the assignment of the Lease Agreement and the Basic Documents from the Company to the New Company.

Section 3. 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 the New Application, 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 this Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Request and the New Application binding upon the Agency.

Section 4. The Approving Resolution, except as modified by this Resolution, continues in full force and effect.

Section 5. This Resolution shall take effect immediately.

- **SPECIAL MEETING IN OCTOBER (VENEZIA)**

Chairman Venezia discussed scheduling a special meeting in October to discuss the Agency's effectiveness - date to be determined.

- **PICK DATES FOR FINANCE COMMITTEE BUDGET MEETINGS (VENEZIA)**

The Finance Committee will meet Thursday, September 7 at 8am to discuss the 2018 budget.

VII. Adjournment

Motion To: Adjourn

RESULT: **ADJOURN [UNANIMOUS]**
MOVER: Tim Maniccia, Board Member
SECONDER: Sandra Shapard, Board Member
AYES: Venezia, Richardson, McCann, Storrs, Shapard, Maniccia, Kidera