

TOWN OF AMHERST DEVELOPMENT CORPORATION
Agenda – 174th Meeting
Friday, March 22, 2024 – 8:30 am

James J. Allen Boardroom
Corporation Offices, 4287 Main Street

1. Roll Call
2. Reading and Approval of Minutes
3. Committee Reports
 - I. Nominating Committee
 1. 2024 Election of Officers
 2. 2024 Committee Assignments
 - II. Audit & Finance Committee
 1. Accept and Approve 2023 Audited Financial Statements
 - III. Governance Committee
 1. 2023 Authority Mission and Performance Measurement Report
4. New Business
 - I. 2011 Asbury Pointe, Inc. Bond Issue – Request for Remarketing Agent Replacement
5. Adjournment

TOWN OF AMHERST DEVELOPMENT CORPORATION
Minutes of the 172nd Meeting
Friday, October 20, 2023 – 8:30 am
James J. Allen Boardroom
Agency Offices, 4287 Main Street

PRESENT: Carlton N. Brock, Jr.
William Tuyn
Hadar Borden
Frank LoTempio, III
Nicole Gavigan
David S. Mingoia, Executive Director
Kevin J. Zanner, Hurwitz & Fine PC

ABSENT: Anthony Agostino
Hon. Timothy Drury

GUESTS: AIDA Staff
Christopher Canada, Esq., Hodgson Russ (via Zoom)
Sean Hopkins
David Tytka
Tom Frank
Kim Pflugger

Chairman Carlton Brock called the meeting to order and reminded everyone the meeting was being video recorded and live-streamed.

MINUTES

Upon a motion by Frank LoTempio seconded by Hadar Borden and unanimously carried, the minutes of the June 2023 meeting were approved as presented.

COMMITTEE REPORTS

- I. **Audit & Finance Committee**
 - a) **Modification to Tax Exempt Bond Issue**

David Mingoia informed the board that the Finance & Audit Committee met to discuss the Bond Modification Request for the Beechwood Health Care Center Inc., tax exempt bond issue. Mr. Mingoia told the board that the Committee unanimously approved the request and recommended that the matter be forwarded to the ADC board for approval.

NEW BUSINESS

- I. **Modification to Tax Exempt Bond Issue – Beechwood Health Care Center Inc.**

The board briefly discussed the request for the Modification to the Tax-Exempt Bond Issue for the Beechwood Health Care Center Inc. bond. Upon a motion to approve by Frank LoTempio, seconded by William Tuyn, a roll call vote was taken to approve the motion:

Brock – aye
Tuyn – aye
Borden – aye
LoTempio – aye
Gavigan – aye

The motion to approve the Bond Modification request passed unanimously by a vote of 5-0.

8:37 am – Frank LoTempio made a motion to adjourn the meeting. William Tuyn seconded the motion and it passed unanimously.

**TOWN OF AMHERST DEVELOPMENT CORPORATION
ORGANIZATIONAL CHART
2024**

BOARD OF DIRECTORS

Carlton N. Brock, Jr.	Chair
William W. Tuyn	Vice-Chair
Anthony T. Agostino	Treasurer
Honorable Timothy J. Drury	Secretary
Hadar Borden	Member
Frank LoTempio III	Member
Nicole Gavigan	Member

ASSISTANT SECRETARIES

Kevin J. Zanner

COMMITTEES

Executive Committee

Carlton N. Brock, Jr.
William W. Tuyn
Anthony T. Agostino
David S. Mingoia

Audit/Finance Committee

Anthony T. Agostino
Hadar Borden
Nicole Gavigan

Governance Committee

Carlton N. Brock, Jr. - Chair
Honorable Timothy J. Drury
Frank LoTempio III

EXECUTIVE STAFF

David S. Mingoia, Executive Director/CEO
dmingoia@amherstida.com
716.688.9000
716.688.0205 (fax)

Authority Mission Statement and Performance Measurements - 2023

Name of Public Authority: Amherst Development Corporation (ADC)

Mission Statement: The mission of the Amherst Development Corporation is to promote economic diversity and to broaden the tax base, including capital development by not-for-profit entities, for the Town of Amherst in order to maintain and enhance a high-quality living environment.

Date Reaffirmed: March 22, 2024

List of Performance Goals

Goal #1: Promote private investment and enhanced community facilities

Measured by: (1) Value of new investment from low-interest financing provided to non-profit organizations.

	Date Issued	Bond Amount
Tax-Exempt Bond Issue		
None		

There were a number of ADC actions on existing bonds to convert the underlying interest rate to the Secured Overnight Financing Rate (SOFR) as required by U.S. banking regulators.

Tax-Exempt Bond	Date Approved
Asbury Point – 2013 Bond	04/2023
Beachwood Health Care Center – 2017 Bond	04/2023
YMCA – 2011 Bond	06/2023



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February 21, 2024

Town of Amherst Development Corporation
4287 Main Street
Amherst, New York 14226-3504
Attn: Mr. David Mingoia, CEO

Re: Request for Appointment of Successor Remarketing Agent – Asbury Pointe, Inc. Project

Dear Mr. Mingoia:

We are writing to request that the Town of Amherst Development Corporation (the “Issuer”) appoint a successor remarketing agent in accordance with Section 12.01 of the Trust Indenture, dated as of December 1, 2011 (as amended to date and as may be amended, supplemented or otherwise modified from time to time, the “Indenture”), between the Issuer and Manufacturers and Traders Trust Company, as trustee (the “Trustee”), with respect to the Town of Amherst Development Corporation Senior Living Facility Variable Rate Demand Refunding Revenue Bonds, (Asbury Pointe, Inc. Project), Series 2011A (the “Bonds”).

The prior remarketing agent, Manufacturers and Traders Trust Company, has exited the remarketing agent business and resigned as remarketing agent. However, that resignation cannot be completed under the Indenture until a successor remarketing agent is appointed. As required by Section 12.01 of the Indenture, the Issuer, acting at the direction of Asbury Pointe, Inc., must appoint a successor remarketing agent.

We hereby ask that the Issuer appoint B.C. Ziegler and Company as the successor remarketing agent in accordance with the enclosed Appointment and Assumption Agreement.

We respectfully ask that the Issuer address this request expeditiously so that we can replacement the remarketing agent by or close to the end of February, 2024.

Please let me know if you have any questions or need further information. I can be reached at kanderson@beechwoodcare.org or 716-810-7302.

Very truly yours,

Kristin M. Anderson
Vice President of Finance

**APPROVING RESOLUTION RELATING TO
REPLACEMENT OF REMARKETING AGENT
ASBURY POINTE, INC. PROJECT**

A regular meeting of the Town of Amherst Development Corporation (the “Issuer”) was convened in public session at the offices of the Issuer located at 4287 Main Street in the Town of Amherst, Erie County, New York on March 22, 2024 at 8:30 o’clock, a.m., local time.

The meeting was called to order by the Chairperson of the Issuer and, upon roll being called, the following were:

PRESENT:

Carlton N. Brock, Jr.	Chairperson
William W. Tuyn	Vice-Chairperson
Anthony T. Agostino	Treasurer
Hon. Timothy Drury	Secretary
Hadar Borden	Director
Frank LoTempio III	Director
Nicole Gavigan	Director

ABSENT:

ALSO PRESENT:

David S. Mingoia	Chief Executive Officer
Kevin J. Zanner, Esq.	Issuer Counsel
Christopher C. Canada, Esq.	Bond Counsel (via Zoom)

The following resolution was offered by _____, seconded by _____, to wit:

RESOLUTION (A) THE CONSENT OF TOWN OF AMHERST DEVELOPMENT CORPORATION (THE “ISSUER”) TO THE REPLACEMENT OF THE REMARKETING AGENT RELATING TO THE ISSUER’S SENIOR LIVING FACILITY VARIABLE RATE DEMAND REFUNDING REVENUE BONDS (ASBURY POINTE, INC. PROJECT), SERIES 2011A ISSUED BY THE ISSUER ON DECEMBER 29, 2011; (B) THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AND (C) MAKING A FINDING IN COMPLIANCE WITH THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT.

WHEREAS, Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Enabling Act”) (A) authorizes any county, city, town or village to cause a not-for-profit local development corporation to be incorporated by public officers for, among other things, the public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest, (B) declares that in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, such corporations will be performing essential governmental functions, and (C) authorizes each such corporation to acquire real and personal property, to borrow money and issue negotiable bonds, notes and other obligations therefore, and to lease, sell, mortgage or otherwise

dispose of or encumber any of its real or personal property upon such terms as it may determine and otherwise carry out its corporate purposes in the territory in which the operations of such corporation are principally to be conducted; and

WHEREAS, pursuant to the provisions of the Enabling Act and Revenue Ruling 57-187 and Private Letter Ruling 200936012, the Town Board of the Town of Amherst, New York (the "Town Board") adopted a resolution (the "Sponsor Resolution") (A) authorizing the reincorporation of the Issuer under the Enabling Act and (B) appointing the initial members of the board of directors of Town of Amherst Development Corporation (the "Issuer"), who serve at the pleasure of the Town Board; and

WHEREAS, on February 3, 2010, a certificate of reincorporation was filed with the New York Secretary of State's Office (the "Certificate of Reincorporation") creating the Issuer pursuant to the Enabling Act as a public instrumentality of the Town of Amherst, New York; and

WHEREAS, on December 29, 2011, the Issuer issued its Senior Living Facility Variable Rate Demand Refunding Revenue Bonds (Asbury Pointe, Inc. Project), Series 2011A in the aggregate principal amount of \$7,790,000 (the "Series 2011A Bonds") pursuant to a resolution adopted by the members of the board of directors of the Issuer on December 9, 2011 (the "Bond Resolution"), a certificate of determination dated December 29, 2011 (the "Certificate of Determination") executed by an authorized officer of the Issuer and a trust indenture dated as of December 1, 2011 (the "Indenture") by and between the Issuer and Manufacturers and Traders Trust Company, as trustee for the holders of the Series 2011A Bonds (the "Trustee"); and

WHEREAS, proceeds of the Series 2011A Bonds were used to finance a project (the "Project") for the benefit of Asbury Pointe, Inc., a New York not-for-profit corporation (the "Institution") consisting of the following: (A) (1) the financing of a portion of the costs of the refinancing and/or refunding of the Revenue Bonds (Asbury Pointe, Inc. Project), Series 1999B, Extendable Rate Adjustable SecuritiesSM (EXTRASSM) in the original aggregate principal amount of \$5,100,000 (the "Prior Series 1999B Bonds") issued by Town of Amherst Industrial Development Agency (the "Prior Issuer") on or about March 3, 1999, which Series 1999B Bonds were issued to finance a portion of the following project (the "Prior Series 1999B Project"): (a) acquiring an interest in an approximately 5.3 acre parcel of vacant land located at 50 Stahl Road in the Town of Amherst, Erie County, New York (the "1999 Land"), (b) the construction thereon of an approximately 91,500 square foot, 3 story building to be used for approximately 66 independent living apartment units and community common areas for the elderly, approximately 23,000 square feet of basement and underground parking space, and the construction of other site improvements (collectively, the "1999 Facility"), and (c) the acquisition and installation of elevators, appliances, furnishings and other related items (collectively, the "1999 Equipment") (the 1999 Land, the 1999 Facility and the 1999 Equipment being collectively referred to as the "1999 Project Facility") and (2) the financing of a portion of the costs of the refinancing and/or refunding of the Prior Issuer's Senior Living Facility Revenue Bonds (Asbury Pointe, Inc. Project), Series 2003B Extendable Rate Adjustable SecuritiesSM (EXTRASSM) in the original aggregate principal amount of \$3,290,000 (the "Prior Series 2003B Bonds", and collectively with the Prior Series 1999B Bonds, the "Prior Bonds") issued on January 30, 2003, which Series 2003B Bonds were issued to finance a portion of the following project (the "Prior Series 2003B Project"): (a) acquiring an interest in an approximately 2.7 acre parcel of land located at 50 Stahl Road in the Town of Amherst, Erie County, New York (the "2003 Land"), (b) the construction thereon of 44 unit three-story expansion and related site improvements to the 1999 Facility for senior citizens (the "2003 Facility") and (c) the acquisition and installation of elevators, appliances, furnishings, kitchen equipment and other items of personalty (collectively, the "2003 Equipment"), all to provide independent senior housing with a community dining room and additional common areas (the 2003 Land, the 2003 Facility and the 2003 Equipment being collectively referred to as the "2003 Project Facility"); (B) the financing of all or a portion of the costs of the foregoing by the issuance of the Series 2011A Bonds; (C) the paying of all or a portion

of the costs incidental to the issuance of the Series 2011A Bonds, including issuance costs of the Series 2011A Bonds and any reserve funds as may be necessary to secure the Series 2011A Bonds; (D) the granting of certain other financial assistance with respect to the foregoing, including potential exemptions from certain real estate transfer taxes and mortgage recording taxes (collectively with the Series 2011A Bonds, the “Financial Assistance”); and (E) the making of a loan (the “Loan”) of the proceeds of the Series 2011A Bonds to the Institution or such other person as may be designated by the Institution and agreed upon by the Issuer; and

WHEREAS, in connection with the issuance of the Series 2011A Bonds, the Issuer, the Institution, the Trustee and Manufacturers and Traders Trust Company, as the initial remarketing agent (the “Original Remarketing Agent”), entered into a remarketing agreement dated as of December 1, 2011 (the “Remarketing Agreement”) by and among the Issuer, the Institution, the Trustee and the Original Remarketing Agent; and

WHEREAS, pursuant to the Remarketing Agreement, the remarketing agent therein (the “Remarketing Agent”) is required to remarket the Series 2011A Bonds tendered by the Owners thereof on each Purchase Date (as such terms are defined in the Remarketing Agreement) and determine the interest rate on the Series 2011A Bonds; and

WHEREAS, pursuant to a notification from the Institution dated February 21, 2024 (the “Request”), a copy of such Request being attached hereto as Exhibit A, the Issuer was notified that (i) the Original Remarketing Agent has resigned from its role as Remarketing Agent under the Remarketing Agreement (subject to the appointment of a successor Remarketing Agent), (ii) B.C. Ziegler (“Ziegler”) wishes to act as replacement Remarketing Agent and (iii) requesting that the Issuer consent to the appointment of Ziegler as replacement Remarketing Agent (collectively, the “Action”); and

WHEREAS, in connection therewith, the Issuer, the Institution, the Trustee, the Original Remarketing Agent and Ziegler desire to enter into certain documents necessary in order to effect the Action (such documents being collectively referred to hereinafter as the “Remarketing Documents”); and

WHEREAS, the Issuer now wishes to authorize the Action; 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 (the “Regulations”, and collectively with the SEQR Act, “SEQRA”), the Issuer must determine the potential environmental significance of the Action;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF TOWN OF AMHERST DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. Pursuant to SEQRA, the Issuer hereby finds and determines that:

(A) Pursuant to Section 617.5(c)(26) of the Regulations, the Action (including but not limited to the execution and delivery of the Remarketing Documents) is a “Type II action” (as said quoted term is defined in the Regulations).

(B) Accordingly, the Issuer hereby determines that no environmental impact statement or any other determination or procedure is required under SEQRA with respect to the Action.

Section 2. The Issuer hereby finds and determines that:

(A) By virtue of the Act, the Issuer 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) It is desirable and in the public interest for the Issuer to enter into the Remarketing Documents.

Section 3. In consequence of the foregoing, the Issuer hereby determines to: (A) authorize the Action; (B) subject to approval of the form and substance of the Remarketing Documents by Bond Counsel and counsel to the Issuer, approve the form and substance of the Remarketing Documents; and (C) subject to (i) compliance with the terms and conditions contained in the existing documents relating to the Series 2011A Bonds and (ii) compliance with state and federal law applicable to the Action, authorize the execution and delivery of the Remarketing Documents.

Section 4. Subject to the satisfaction of the conditions described in Section 3 hereof, the Chairperson, Vice Chairperson and Chief Executive Officer of the Issuer (each, an “Authorized Officer”) is hereby authorized, on behalf of the Issuer, to execute and deliver the Remarketing Documents and the other documents related thereto and, where appropriate, the Assistant Secretary of the Issuer is hereby authorized to affix the seal of the Issuer thereto and to attest the same, all in substantially the forms thereof approved by Bond Counsel and counsel to the Issuer, with such changes, variations, omissions and insertions as the Authorized Officer of the Issuer shall approve, the execution thereof by the Authorized Officer of the Issuer to constitute conclusive evidence of such approval.

Section 5. The officers, employees and agents of the Issuer are hereby authorized and directed for and in the name and on behalf of the Issuer to do all acts and things required or provided for by the provisions of the Remarketing 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 this resolution and to cause compliance by the Issuer with all of the terms, covenants and provisions of the Remarketing Documents binding upon the Issuer.

Section 6. This resolution shall take effect immediately.

[Remainder of page left blank intentionally]

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

Carlton N. Brock, Jr.	VOTING	_____
William W. Tuyn	VOTING	_____
Anthony T. Agostino	VOTING	_____
Hon. Timothy Drury	VOTING	_____
Hadar Borden	VOTING	_____
Frank LoTempio III	VOTING	_____
Nicole Gavigan	VOTING	_____

The foregoing resolution was thereupon declared duly adopted.

[Remainder of page left blank intentionally]

STATE OF NEW YORK)
) SS.:
COUNTY OF ERIE)

I, the undersigned (Assistant) Secretary of the Town of Amherst Development Corporation (the “Issuer”), DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the board of directors of the Issuer (the “Board of Directors”) held on March 22, 2024, including the resolution contained therein, with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Board of Directors had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law of the State of New York (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Board of Directors 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 rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of March, 2024.

Assistant Secretary

EXHIBIT A
REQUEST

See attached.



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February 21, 2024

Town of Amherst Development Corporation
4287 Main Street
Amherst, New York 14226-3504
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Please let me know if you have any questions or need further information. I can be reached at kanderson@beechwoodcare.org or 716-810-7302.

Very truly yours,

Kristin M. Anderson
Vice President of Finance