

**MINUTES OF THE MEETING
OF THE
MEMBERSHIP OF THE
ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (ECIDA)**

DATE AND PLACE: July 15, 2015, at the Erie County Industrial Development Agency, 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203

PRESENT: Hon. Byron W. Brown, James F. Doherty, Dennis Elsenbeck, Dottie Gallagher-Cohen, Hon. Mary F. Holtz, Chris Johnston, Richard Lipsitz, Jr., Brenda W. McDuffie, Frank B. Mesiah, John J. Mudie, Hon. Glenn R. Nellis, Dr. Carol Nowak, Hon. Mark C. Poloncarz, Hon. Edward A. Rath, III, David J. State

EXCUSED: Hon. Anthony F. Caruana, Hon. Betty Jean Grant, Hon. Darius G. Pridgen, and Hon. Barry A. Weinstein

OTHERS PRESENT: Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Andrew Schoepich, Treasurer; Karen M. Fiala, Assistant Treasurer; Mollie Profic, Assistant Treasurer, and Robert G. Murray, Secretary

There being a quorum present at 9:09 a.m., the meeting of the members of the Erie County Industrial Development Agency was called to order by Ms. McDuffie.

MINUTES

The minutes of the June 17, 2015 Meeting of the Members were presented. Upon motion made by Mr. Lipsitz, and seconded by Mr. Mesiah, the minutes were unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Mr. Schoepich presented the financial statements noting that the Agency had administrative fee income of approximately \$180,000 and on a monthly basis, is approximately \$40,000 ahead of budget. Mr. Schoepich noted that the Agency expended approximately \$150,000 in UDAG strategic initiative funds including \$100,000 for the Buffalo Urban Development Corporation and \$50,000 for Launch NY and as such, the Agency experienced a net loss of approximately \$200,000 for the month of June, 2015. On a year to date basis, Mr. Schoepich noted that the Agency is approximately \$1,400,000 ahead of budget. Mr. Poloncarz queried as to why the Agency is so far ahead of budget and why so much revenue was unexpected. Mr. Schoepich noted that the budget attempts to anticipate transaction volume and noted that the Catholic Health bond transaction came in unexpectedly and also commented that the Harbor Center project is paying its administrative fee over a period of time instead of in one lump sum. Ms. McDuffie asked, with respect to the surplus, if the Finance Committee would

consider modifying the budget. Mr. Schoeppich responded that the Finance Committee can consider revising the budget.

There being no further comments, Ms. McDuffie directed that the report be received and filed.

2015 Tax Incentive Induced/Closing Schedule/Estimated Real Property Tax Impact. Ms. Fiala presented this report. There being no comments, Ms. McDuffie directed that the report be received and filed.

RDC Loan Status Report. Mr. Manhard presented this report. There being no comments, Ms. McDuffie directed that the report be received and filed.

TM Montante Update. Mr. Manhard provided members with a brief update on the TM Montante project, noting that the project is proceeding ahead of schedule and that the RDC anticipates lending its second tranche of loan proceeds by the end of August. Ms. McDuffie directed that the report be received and filed.

Policy Committee Report. Mr. Lipsitz provided members with an update on the most recently completed Policy Committee meeting whereat members approved, and recommended for approval to this body, the Pay Equity Policy which will be discussed shortly. At this point in time, Mr. Poloncarz moved to approve the Pay Equity Policy. Mr. Mesiah seconded the motion.

Mr. Poloncarz then commented on the Agency's draft Pay Equity Policy noting that it has been debated now for a very long time over the course of several Policy Committee meetings and confirmed that the Agency should only provide financial assistance to companies that pay and treat women fairly. Mr. Poloncarz commented that a woman makes only 78% of the salary of a male and an African-American woman makes only 67% of the salary of their male counterparts. Mr. Poloncarz stated that the ECIDA has a fiduciary duty to the taxpayers of Erie County and as such, the ECIDA should not support any company that discriminates against women.

At this point in time, Mr. Rath, Mr. Brown and Mr. Doherty joined the meeting.

Mr. Poloncarz stated that he believes the majority of companies in Erie County do pay women equally. In additionally, Mr. Poloncarz stated that he believes that the pay equity debate centers around the issue of whether a company certification is enough to confirm pay equity in comparison to permitting desk audits to actually confirm such an assertion. Mr. Poloncarz expressed his belief in the "trust but verify" approach used by former President Reagan and stated his belief that a strong verification system should be in place to confirm whether or not a company is paying women the same as what they pay a man for the same job with the same experience. Recently, Mr. Poloncarz noted he met with three prominent Erie County business leaders and learned that they believe a Pay Equity Policy will not harm Erie County businesses. Mr. Poloncarz continued on to state that the Agency has an opportunity to pass a Pay Equity Policy and be the first IDA in New York State to say if you want a tax break, you must adhere to New York and federal pay equity laws. Mr. Poloncarz concluded by stating that pay equity law

violations will not be tolerated and by passing this policy, Erie County sends a strong message that it will not tolerate discrimination.

Ms. Gallagher-Cohen spoke thanking Mr. Poloncarz for his forward thinking philosophy in implementing pay equity. Ms. Gallagher-Cohen commented that New York state, in comparison to all other states in the country, has one of the lowest numbers of federal pay equity suits in process. Ms. Gallagher-Cohen expressed her support for a pay equity policy but one requiring annual compliance certification, as opposed to desk audits, because Erie County is at a time when we are gaining ground, and anything that introduces uncertainty into the business process is bad for business. The problem, Ms. Gallagher-Cohen stated, is the idea of having the ECIDA and Erie County undertake compliance on behalf of the federal government to enforce a federal law and takes the ECIDA off of its business mission into an arena in which it has no experience. There are many nuances which could explain why a woman may be paid less than a man and Ms. Gallagher-Cohen expressed concern as to whether audits would really be random and also a concern because such a policy requiring audits duplicate state and federal efforts.

Mr. Rath commented that the Policy Committee has had several excellent debates regarding pay equity and he then expressed his support for a pay equity policy but expressed concern with the policy as proposed because the process to enforce pay equity is flawed. The process creates a restrictive regulatory rule outside the source of ECIDA powers and purposes and doesn't push forward the mission of the Agency. Mr. Rath stated that he has spoken with several businesses in Erie County who have concerns about random auditing as well as creating a guilty until proven innocent precedent. Mr. Rath then thanked the Buffalo Niagara Partnership ("BNP") for establishing an alternative pay equity policy in contrast to the one being considered today. In conclusion, Mr. Rath confirmed that he is not against equal pay for women, but he is advocating that the Agency establish a better process and as such, requests that the Agency consider the BNP's alternative.

Mr. Lipsitz stated that he is in favor of voting today on the policy as presented to the members and as approved by the Policy Committee. Mr. Lipsitz stated the notion of giving incentives is already limited to certain ECIDA policies, and if a company has a problem with the pay equity policy that it may not be a company who the Agency would want to give financial assistance to in any event.

Mr. Elsenbeck then stated that he, like everyone here, is in favor of equal pay but expressed concern about the process. For instance, Mr. Elsenbeck questioned as to whether the Agency has tested if there even is a pay equity issue and whether Erie County is merely relying on national figures that may not apply to Erie County itself. Mr. Elsenbeck queried as to whether Erie County really has a pay equity problem and expressed concern that we are creating a new policy in a reactive manner addressing an issue that may not exist.

Ms. Gallagher-Cohen responded that she agrees that the Agency should not provide financial assistance to pay equity abusers. However, the issue is having a business disclose its payroll records to Erie County. Ms. Gallagher-Cohen expressed concern as to how businesses will be chosen for such random audits, and how the information will be shared.

Mr. Poloncarz noted that Erie County has had two pay equity actions recently which indicate that Erie County does have a pay equity problem and then reiterated that the Agency has a fiduciary duty to residents of Erie County and that our goal is not just to be pro-business, but to be pro-Erie County and we shouldn't be giving tax breaks to any business that discriminates against women.

Ms. McDuffie then complimented the Agency members and the Policy Committee on how well and respectfully it has debated this issue and stated how much more proud of the Agency she would be if it were to approve of a policy that insures companies pay women equally in return for the provision of tax incentives. At this point in time, Ms. McDuffie called for a roll call vote and the Pay Equity Policy as proposed was approved by a vote of 12 to 3 with Mr. Johnston, Mr. Lipsitz, Ms. McDuffie, Mr. Nellis, Mr. Brown, Mr. Poloncarz, Ms. Holtz, Mr. Mudie, Mr. Mesiah, Ms. Nowak, Mr. Doherty and Mr. State voting in the affirmative, and Mr. Rath, Ms. Gallagher-Cohen and Mr. Elsenbeck voting in the negative.

AMENDATORY INDUCEMENT RESOLUTIONS

Orchard Heights, Inc., 5200 Chestnut Ridge Road, Orchard Park, New York. Mr. Cappellino reviewed the revised application for the Orchard Heights, Inc. project which was initially approved by the Agency on July 16, 2014 confirming that the company is seeking an amendment because the scope and size of the project has decreased and as result, costs have decreased, so that the Agency must confirm new material terms and conditions related to the now decreased cost and size of the project as well as decreased sales tax benefits and decreased overall investment as well as reviewed job creation and retention numbers. Overall, Mr. Cappellino noted that the amended project is approximately \$10 million dollars smaller in costs because the company will now only construct one, instead of two, independent living apartment buildings as originally proposed and approved. As such, the current estimated benefited amount has been reduced by approximately 35%.

Mr. Cappellino confirmed that as a condition precedent of receiving financial assistance, the material terms and conditions established by the Agency have been revised, as presented below, and as such the company must, subject to potential recapture of state and local sales and use tax exemption benefits and mortgage recording tax exemption benefits, submit on an annual basis or as indicated below through the conclusion of the later of either two years following: (i) the construction completion date; or (ii) the termination of the Agent Agreement, a certification as so required by the Agency confirming:

- (i) the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$15,893,783 (which represents the product of 85% multiplied by \$18,698,569 (representing the total project cost as stated in the Company's amended application for financial assistance));
- (ii) that there are at least forty-nine (49) existing full time equivalent ("FTE") employees and that there are at least fifty-three (53) existing part time equivalent (PTE) employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE/PTE"); and

- (iii) that, at the conclusion of year two following Project completion and through the term of the PILOT Agreement, the Project has maintained and created FTE employment at the Facility equal to 54 FTE employees [representing the sum of 49 Baseline FTE employees plus 5 new FTE employee positions (being the product of 85% multiplied by 6, representing the 6 new FTE employee positions as proposed to be created by the Project as stated in the Company’s application for financial assistance)] and that, at the conclusion of year two following Project completion and through the term of the PILOT Agreement, the Project has maintained and created PTE employment at the Facility equal to 66 PTE employee positions [representing the sum of 53 PTE Baseline PTE employees plus 13 new PTE employee positions (being the product of 85% multiplied by 16, representing the 16 new PTE employee positions as proposed to be created by the Project as stated in the Company’s application for financial assistance)]; and

In addition, Mr. Cappellino also stated that the company, based on the now amended project, will also be authorized to make purchases of goods and services relating to the amended project and that would otherwise be subject to New York State and local and sales use tax in an amount estimated up to \$8,476,250, which may result in New York State and local and sales use tax exemption benefits not to exceed \$741,672. Mr. Johnston moved, and Mr. Rath seconded to approve of the project as amended. Ms. McDuffie called for the vote and the following resolution was approved by a vote of 14-1 with Mr. Lipsitz voting in the negative.

AMENDATORY INDUCEMENT RESOLUTION OF THE ERIE COUNTY
INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE APPROVAL
OF THE REVISION TO THE PROJECT DESCRIPTION AND CERTAIN
MATERIAL TERMS AND CONDITIONS RELATED TO THE PROVISION
OF FINANCIAL ASSISTANCE WITH RESPECT TO THE ORCHARD
HEIGHTS, INC. PROJECT (AS MORE FULLY DESCRIBED BELOW)

MANAGEMENT TEAM REPORTS

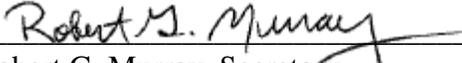
Mr. Weathers commented on the most recently concluded Venture Advisory Committee meeting noting that the committee reviewed two potential business opportunities which will continue to be vetted.

Mr. Weathers commented that Agency staff recently met with the Erie County Workforce Investment Board (“WIB”) to consider ways to implement County Executive Poloncarz’s initiative, as contained within his “Initiatives for a Stronger Community” to ensure a working partnership between the Agency and the WIB.

Mr. Schoepfich commented that the Agency staff recently met with RDC/ECIDA board members to review and educate members regarding the sequestration issues adversely affecting the RDC.

There being no further business to discuss, upon motion made by Mr. Rath and seconded by Mr. Poloncarz, Ms. McDuffie adjourned the meeting at 9:58 a.m.

Dated: July 15, 2015



Robert G. Murray, Secretary