

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

**DATE AND PLACE:** August 18, 2015, at the Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor ESD Conference Room, Buffalo, New York 14203

**PRESENT:** Hon. Byron W. Brown, James F. Doherty, Dennis Elsenbeck, Hon. Mary F. Holtz, Richard Lipsitz, Jr., Brenda W. McDuffie, Frank B. Mesiah, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen, Hon. Edward A. Rath, III and David J. State

**EXCUSED:** Hon. Anthony F. Caruana, Dottie Gallagher-Cohen, Hon. Betty Jean Grant, Chris Johnston, John J. Mudie, Dr. Carol Nowak, and Hon. Barry A. Weinstein

**OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Karen M. Fiala, Assistant Treasurer; Mollie Profic, Assistant Treasurer, and Pietra G. Lettieri, Assistant Secretary

There being a quorum present at 9:06 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 July 15, 2015 Meeting of the Members were presented. Upon motion made by Mr. Poloncarz, and seconded by Mr. Elsenbeck, the minutes were unanimously approved.

**REPORTS/ACTION ITEMS/INFORMATION ITEMS**

Financial Report. Ms. Mollie Profic, the Assistant Treasurer of the Erie County Industrial Development Agency, presented the financial statements, noting that the Agency had revenue of approximately \$155,000 ahead of budget. Year-to-date income was reviewed and it was noted that operating expenses are below budget year-to-date. Ms. McDuffie inquired whether there were any questions or comments on the Financial Report. There being none, 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. Alexander presented this report. Mr. Poloncarz inquired as to what dollar amount is available in the loan fund. Mr. Alexander replied that there is \$300,000 available at this time, and staff anticipates, with reflow of \$200,000 per month, they will be able to fund the most recent loan requests of \$500,000 and \$1,000,000, respectively. Ms. McDuffie commented that the RDC wants to be able to provide direct assistance to businesses when necessary, therefore it is important to maintain the fund balance.

Legal RFP Timetable. Mr. Weathers introduced the topic of the Legal RFP Timetable. He noted that copies of the RFP were distributed to the board members for information purposes. Mr. Weathers explained that in January of 2016 the contract for legal services between the ECIDA and Harris Beach will expire. Mr. Weathers noted that the Legal RFP would be distributed to the 20 largest law firms in the area. He wants this to be a transparent process. There being no comments to the presentation, Ms. McDuffie directed that the report be received and filed.

Compliance and Monitoring Report. Mr. Weathers introduced and reviewed the history of this report, noting approximately one year ago, at the request of Mr. Mesiah, Agency staff was directed to begin a compliance and monitoring process to review project metrics and company compliance with job creation. Ms. Boudreau reviewed the status of tax incentive project site visits and compliance results for the time period September 2014 to August 2015. Ms. Boudreau noted that the compliance review is a team effort within the Agency and involves onsite visitation. She highlighted the API Heat Transfer Incentive Project, noting that as of 12/31/14 the company still needed to add 64 jobs, however, at that time the company had not yet moved its employees into its new offices. To date, API has exceeded its investment amount and investment outlays have been confirmed. Ms. Boudreau explained that staff is gathering information on the status of companies meeting the material factor requirements for various projects. However, she noted that the material factor compliance did not apply to all companies with outstanding projects. Ms. Boudreau also highlighted the performance of Welded Tube, Curtis Niagara and Hydro-Air Components as representative projects.

Ms. Boudreau then reviewed the status of Agency staff's visits to recipients of loan assistance. She noted that no material factors are connected to the recipient of RDC loan funds. Highlighted projects included Fresh & Fluffy and HLM Landscaping.

Mr. Pridgen inquired whether, although some companies are not subject to recapture requirements, they still have to meet employment goals. Ms. Boudreau responded in the affirmative, but noted that not all companies' data available were included in her presentation. Mr. Pridgen requested that the Agency prepare a summary of all site visits so that the board members could refer to all projects whether or not they were highlighted as today's presentation. Ms. McDuffie agreed with Mr. Pridgen's comments and pointed out that there is a summary of the local labor results in the board materials.

Mr. Poloncarz then commented as to the timing of the employment surveys, noting that the API Heat Transfer Project was reviewed as of December 31, 2014, and the site visit was held on July 9, 2015. He asked how often the employment surveys are conducted. Ms. Boudreau responded that employment surveys are distributed at the end of December and the site visits

occur throughout the year. Mr. Poloncarz then inquired as to what is to prevent an employer from reporting, for example, 125 jobs and the next day after the report is made reducing headcount to 100. Mr. Poloncarz stated that the Board should be receiving quarterly reports on employment data, remarking that the Agency can go above and beyond the State annual reporting requirement. Mr. Poloncarz emphasized that he would like to see average employment numbers reported throughout the year, not just once a year to coincide with the State's requirement. Ms. Boudreau responded that the Agency could implement that process moving forward. Mr. Mesiah inquired whether the site visits are field or office visits and Mr. Weathers replied that they are full onsite visits. Ms. McDuffie noted that the same staff personnel are going out to the companies to improve marketing relationships and communications with customers.

Next, Ms. Boudreau described the staff/client compliance education program and noted that Board members are invited to attend the coming sessions. Mr. Lipsitz inquired as to how people would find out about the client compliance education sessions. Ms. Boudreau responded that the Agency will be emailing active clients to inform them of the workshops. Going forward, staff advises there will be compliance education sessions twice per year. Ms. McDuffie recommended, as staff is marketing to potential new customers, the education sessions should be completed before a company applies for benefits.

Municipal Reports. Ms. Boudreau explained recently the ABO has criticized local municipalities who have tax billings that do not match PILOT terms. Mr. Elsenbeck inquired whether there is a root cause to this problem. Ms. Boudreau responded that there is; for example, due to the fact the Agency does not handle the billing of PILOTs but rather reports on its calculations to municipalities, and each party may not know what the other is billing or calculating. Ms. McDuffie thanked Ms. Boudreau and the compliance team noting that although the Board received one or two reports at this meeting, monitoring is an ongoing process throughout the year.

Policy Committee Report. Mr. Lipsitz provided members with an update on the most recently completed Policy Committee meeting, whereat no new policy initiatives were introduced or approved. Mr. Lipsitz also noted that there were abstentions in two out of the three projects that were placed on the Policy Committee Agenda for approval.

## **INDUCEMENT RESOLUTIONS**

95 Pirson Parkway LLC, 95 Pirson Parkway, Tonawanda, New York. Ms. Fiala reviewed the application for the 95 Pirson Parkway Project, explaining the Project involves a proposal to construct a 40,000 square foot facility in the Town of Tonawanda for MJ Mechanical ("MJ"). Ms. Fiala explained that MJ is a full service commercial and industrial heating and ventilation, air conditioning and refrigeration contractor servicing Western and Central New York and Northern Pennsylvania. The Project will allow MJ to expand its metal fabrication business and to start a new plumbing division. In addition, fabrication services will be provided for the company's other locations in Syracuse, Rochester and Albany. The company is seeking a sales tax, mortgage tax and real property tax exemption in connection with the construction of the 40,000 square foot facility. The Project will generate approximately \$188,000 of new

revenue to the local taxing jurisdictions over the abatement. Total benefited amount equates to approximately \$131,250 in sales tax savings; mortgage tax savings in the estimated amount of \$19,000 and approximately \$710,000 in real property tax savings. The company currently employs 141 full time and 2 part time employees and is projected to increase employment to 170 full time and 5 part time employees.

Ms. Fiala confirmed that as a condition precedent of receiving financial assistance, the material terms and conditions established by the Agency must be met 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, and real property tax abatements as follows:

- (i) the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$2,808,825 (which represents the product of 85% multiplied by \$3,304,500, being the total project cost as stated in the Company's application for Financial Assistance); and
- (ii) that the Tenant maintains at least 142 existing full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE"), to coincide with the PILOT period; and
- (iii) the number of current FTE employees in the then current year at the Facility; and
- (iv) that the Tenant has maintained and created FTE employment at the Facility equal to 168 FTE employees [representing the sum of 142 Baseline FTE plus the product of 85% multiplied by 31 (being the total number of new FTE employee positions as proposed to be created by the Company as stated in the Company's application for Financial Assistance)]; and
- (v) that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period; and
- (vi) up to 100% recapture of real property tax abatements, at Agency discretion, during the PILOT 10 year term, such term also coinciding for the recapture period for state and local sales tax.

At the conclusion of Ms. Fiala's presentation, Mr. Poloncarz noted that this Project is in an active location for new construction and he supports the Project. Mr. Poloncarz moved and Mr. Lipsitz seconded to approve of the Project as so presented. Ms. McDuffie called the question and the following resolution was approved by unanimous vote:

**RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF 95 PIRSON PARKWAY LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF**

(INDIVIDUALLY, AND/OR COLLECTIVELY, THE “COMPANY”) IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iv) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (v) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT, AND (C) A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE AGREEMENT, AND RELATED DOCUMENTS

Sodexo, Inc., 400 Airborne Parkway, Cheektowaga, New York. Mr. Cappellino introduced this proposed sales tax benefit only Project, and described how it enables Sodexo, as a tenant in a facility to be constructed as described in the subsequent Uniland Project, to acquire and install machinery and equipment for human resources, finance and information technology functions related to Sodexo’s operations. Mr. Cappellino noted that the company plans to invest approximately \$6,000,000 in furniture, fixtures and equipment. He explained that Sodexo is an international company that currently leases four different buildings in the Town of Amherst. Approximately 80% of the company’s sales occur outside of New York State. The average annual salary of employees at the facility is \$62,464. Mr. Cappellino explained that the Project involves an inter-municipal move, and the Towns of Cheektowaga and Amherst have been notified of such potential move in accordance with Agency policy. The approximate sales tax benefits to be attained by the company with the proposed Project are \$467,000. Mr. Cappellino noted that Empire State Development has committed to a \$750,000 grant to retain jobs. Mr. Cappellino also explained that the current facility was the subject of a ten-year PILOT and approval of this Project would lead to the retention of 511 jobs. The Public Hearing transcript and letters of support from elected officials are in the Board package. Mr. Cappellino noted that the proposed Project was recommended for approval at the most recently held Policy Committee meeting with a vote of 7 in favor and 1 abstention.

Mr. Pridgen noted that there were objections to the proposed Project made at the Public Hearing. Ms. McDuffie stated that the objections referenced were from the Coalition for Economic Justice and they were concerned regarding wages paid by Sodexo to the employees at its facility. Ms. McDuffie noted that in response to the raised objections, the Board spent time following up with the company and requested it provide information regarding its payroll. In response the company advised that out of the 511 jobs to be retained; only 13 were at the lowest tier, or \$10.37 per hour. The balance of the company’s payroll to be retained is represented by

salaries that average over \$62,000 per year. Ms. McDuffie noted that she voted in favor of the Project at the Policy Committee Meeting and personally knows of individuals who started off at the company at a low wage and have moved up the ranks, increasing their career potential. Ms. McDuffie is also concerned regarding the possibility that the 511 jobs may not be retained and would prefer that the company stays and the jobs are maintained by local workers.

Mr. Lipsitz noted that he abstained from voting on this Project at the last Policy Committee meeting. Mr. Lipsitz explained his concerns regarding whether the company will stay here and whether there is any proof that the State of Maryland would truly lure the company with a better incentive package. Mr. Lipsitz explained that the letter from Maryland that was produced by the company as evidence of other incentive offers was drafted in the Fall of 2014 from the former governor of Maryland and there has since been a new governor in place, along with no new offer letter produced by the company. Mr. Lipsitz stated he does not want to proceed on the vote with a “gun to his head” with the company threatening to move. As such, he is going to vote no for both the Sodexo and Uniland projects.

Ms. Holtz made a motion to accept the Project, noting she supports it. The company has good paying jobs, retention of the 511 employees is important as is keeping the headquarters in Western New York. Mr. Rath seconded the motion to approve the Project.

Mr. Elsenbeck noted that he is pleased the company has provided new information on its jobs and the wages paid to its workers. He now supports the Project and noted that it is essential when there is a perceived threat to lose a business that there must be action. If we do not nurture business we risk resting on shaky economic development grounds.

Ms. McDuffie noted that the Board must be good stewards of the incentives offered and when the public comments at public hearings the Agency strives to give attention to the comments raised. In this example, wages could have been an issue, but with the additional information requested of and produced by the company, it exhibits that the Agency has taken all comments seriously and fulfilled its obligations to the public. Mr. Elsenbeck also noted they are stewards and need to be consistent with past votes and past practice of the Agency.

Mr. Rath stated that failure to approve the Project could put the 511 jobs at risk in Erie County, that as an Agency they work to provide an example of efficiency to others, and it is important to tell the story to other companies. Also, according to Mr. Rath, the Agency should be deferential to Amherst and Cheektowaga who both support the Project.

Mr. Poloncarz noted that generally speaking he decries movement of companies from one community to another within the area, especially one with greater than 511 jobs. However, this Project is different, in that although they received tax inducements in the past, they expanded their operations in 2000 and he does not want to risk the loss of 500 jobs in Erie County. Due to the fact this is not a move associated with the termination of a PILOT or expiration of a PILOT; but rather, an end of lease situation, he is in support of the Project. Mr. Poloncarz inquired how long the lease would be in place with the new facility the response was 15 years.

Mr. State noted that he fully supports the Project and questioned the August 28, 2015 deadline for approval. Company representative Mr. Pete Sayadoff noted that in November 2015 the Company's current lease it up; therefore they must make decisions on where to relocate in advance of the termination in order to allow time for the move.

Mr. Cappellino confirmed that as a condition precedent of receiving financial assistance, the material terms and conditions established by the Agency must be met as presented below; and as such the company must subject to potential recapture of state and local sales and use tax exemption benefits at project completion as follows:

- (i) the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$5,164,600 (which represents the product of 85% multiplied by \$6,067,002.00, being the total project cost as stated in the Company's application for Financial Assistance); and
- (ii) that there are at least 511 existing full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE"); and
- (iii) the number of current FTE employees in the then current year at the Facility; and
- (iv) that the Company has maintained FTE employment at the Facility equal to the Baseline FTE; and
- (v) the recapture period of state and local sales taxes coincides with Uniland's 10-year PILOT term.

Ms. McDuffie called for the vote and the following resolution was approved by a vote of 11-1 with Mr. Lipsitz voting in the negative:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF SODEXO, INC., AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iv) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (v) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE EQUIPPING OF THE PROJECT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN AGENT AND FINANCIAL ASSISTANCE AGREEMENT AND RELATED DOCUMENTS

The Uniland Partnership of Delaware, L.P., 400 Airborne Parkway, Cheektowaga, New York. Mr. Cappellino presented this proposed sales tax, mortgage tax and property abatement benefits Project involving the construction of a new 110,000 square foot facility for lease to Sodexo. Mr. Cappellino explained that on July 27 a Public Hearing was held and that the transcript of the proceedings is in the package. Mr. Cappellino stated at the last Policy Committee meeting, the Committee voted in favor of approval of the Project by a vote of 7 Yes and 1 Abstention. Representatives from Uniland were present at the meeting to answer questions and explain an overview of the Project.

Mr. Cappellino confirmed that as a condition precedent of receiving financial assistance, the material terms and conditions established by the Agency must be met 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, and real property tax abatements as follows:

- (i) the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$17,899,380 (which represents the product of 85% multiplied by \$21,058,095, being the total project cost as stated in the Company's application for Financial Assistance); and
- (ii) that company commits to the retention of Sodexo's employment, providing there are at least 511 existing full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE"); and
- (iii) the number of current FTE employees in the then current year at the Facility; and
- (iv) that the tenant has maintained the Baseline FTE employment at the Facility; and
- (v) that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period.

Ms. McDuffie called for the vote and the following resolution was approved by a vote of 11-1 with Mr. Lipsitz voting in the negative:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF THE UNILAND PARTNERSHIP OF DELAWARE, L.P., AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iv) APPOINTING

THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (v) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT, AND (C) A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE AGREEMENT, AND RELATED DOCUMENTS

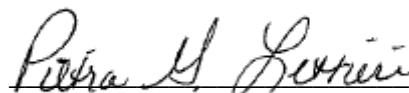
## **MANAGEMENT TEAM REPORTS**

Management Team Update. Ms. McDuffie noted that there was no Management Report this month.

Ms. McDuffie remarked that there is a letter from Legislator Rath in the materials regarding the Agency's proposed Pay Equity Policy. Ms. McDuffie assured that all documents related to the policy are being prepared and will be shared with the Board.

There being no further business to discuss, upon motion made by Mr. Poloncarz and seconded by Mr. Nellis, Ms. McDuffie adjourned the meeting at 10:00 a.m.

Dated: August 18, 2015



---

Pietra G. Lettieri  
Pietra G. Lettieri, Assistant Secretary