

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

DATE AND PLACE: February 22, 2017, at the Erie County Industrial Development Agency, 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203

PRESENT: Hon. Diane Benczkowski, Rev. Mark E. Blue, Hon. Byron W. Brown, James F. Doherty, Dottie Gallagher-Cohen, Hon. Joseph C. Lorigo, David L. Lowrey, Brenda W. McDuffie, John J. Mudie, Hon. Glenn R. Nellis, Louis Panzica, Hon. Mark C. Poloncarz, Sister Denise Roche, Paul V. Vukelic and Hon. Barry A. Weinstein

EXCUSED: Hon. Joseph H. Emminger, Richard Lipsitz, Jr., and Hon. Darius G. Pridgen

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

GUESTS: Maria Whyte, Deputy County Executive; Andrew Federick, Erie County Senior Economic Development Specialist

At 9:04 a.m., the Chair, Ms. McDuffie, called the meeting to order.

MINUTES

The minutes of the January 25, 2017 Meeting of the Members were presented. Mr. Blue moved and Sister Roche seconded to approve of the minutes. Ms. McDuffie called for the vote and the minutes were unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic reviewed the January 2017 financial statements noting that the balance sheet shows the Agency ended 2016 with total assets of \$32 million and net assets of \$28.3 million, reflecting net income of \$4.7 million for the year. Ms. Profic commented that the 2016 draft financial statements will be reviewed by the Finance and Audit Committee on March 13th and presented to the members of the Agency at its March 22nd meeting. Ms. Profic commented that the Agency finished the month of January with total assets of approximately \$30.6 million and net assets of approximately \$28.7 million. The January 2017 income statement shows overall net income of \$353,000 for January. Operating revenue exceeded budget by about \$373,000 due to administrative fees received in excess of the monthly budgeted amount. Total operating expenses were below budget by \$24,000 due mainly to lower than

expected professional services fees. After depreciation, net income was \$353,000 for the month of January, 2017. Ms. McDuffie asked that the report be received and filed.

Funding Buffalo Urban Development Corporation. Ms. Profic reviewed the \$75,000 budget item previously approved by the Agency in its 2017 budget to provide funding from the UDAG Reflow Funds for the Buffalo Urban Development Corporation (“BUDC”) for its downtown initiatives in 2017. Ms. Profic commented that the Agency had granted BUDC funding of \$100,000 per year from 2013 through 2015, and \$75,000 in 2016. Ms. Profic commented that the decrease in funding requested reflects the establishment of BUDC’s downtown loan fund, which provides a portion of the program’s costs. Mr. Weinstein moved and Mr. Lorigo seconded, to approve of the funding request. Ms. Gallagher-Cohen and Mr. Brown stated they would be recusing themselves from this matter because they are also members of the Board of Directors of BUDC. Ms. McDuffie called for the vote and the motion was unanimously approved with Ms. Gallagher-Cohen and Mr. Brown abstaining.

2017 Tax Incentive Induced/Closing Schedule/Backlog Report. Ms. Fiala presented this report. There being no questions, Ms. McDuffie directed that this report be received and filed.

Approved Funding for Bethlehem Steel. Ms. Whyte provided an overview of the Buffalo and Erie County Industrial Land Development Corporation’s (“ILDC”) contemplated purchase of approximately 150 acres of the former Bethlehem Steel site in Lackawanna, New York. Ms. Whyte noted that members of the Agency have been briefed on the ILDC’s contemplated purchase of the Bethlehem Steel property on several occasions and confirmed that the ILDC is engaged in current negotiations with the seller, Tecumseh Real Development, Inc. Ms. Whyte stated that the purchase of the Bethlehem Steel property is a legacy project, setting up the community to engage in advanced manufacturing for the next generation. Ms. Whyte thanked County Executive Poloncarz for his leadership on the proposed acquisition of the Bethlehem Steel property, thanked ILDC board member and Erie County Legislature Mills for his leadership with respect to Erie County Legislature bond resolutions that were passed to provide funding for infrastructure to be constructed within the Bethlehem Steel property and thanked board member and Legislature Lorigo for his role in obtaining Erie County Legislature approval of the infrastructure bonding actions. Ms. Whyte then thanked Mr. Weathers and Mr. Cappellino for their dedication and hard work, thanked Robert Murray and Melanie Marotto, attorneys for Harris Beach, for their excellent work, thanked Erie County Department of Environment and Planning staff, Ken Swanekamp and Chris Pawenski, and Erie County Attorney Kristen Walder and Erie County Economic Development Specialist Andy Federick for their outstanding work and input all in an effort to bring about the ILDC’s acquisition of the Bethlehem Steel property. Ms. Whyte also thanked Tecumseh for its willingness to sell the property to the ILDC and for its ability to see the overall public good that will result. Ms. Whyte also stated that Mr. Emminger, who was unable to be here today, has also expressed his support for the project.

Ms. Whyte then stated that the proposed action today is for the Agency to resolve to grant \$5,700,000 to the ILDC from the Agency’s UDAG Fund, said funds to be used by the ILDC to purchase the real property. In addition, the resolution calls for the Agency to grant \$1,000,000 to the ILDC from the Agency’s UDAG Fund, said funds to be used by the ILDC to carry the real property over an approximate five year time period during which the ILDC would be planning to and dispose of parcels of the real property for redevelopment, job creation, and new investment. In addition, the Agency will be asked to resolve to accept reimbursement from the ILDC for the

grant of UDAG Funds, said reimbursement to be made by the ILDC submission of New York State Empire State Development Corporation grant fund proceeds that it will receive in the amount of \$2,780,000 and from submission of 50% of the net proceeds received by the ILDC upon the future sale of portions of the real property, to refund the Agency in the amount not to exceed \$6,700,000.

At this point in time Mr. Poloncarz moved the item and thanked everyone involved in this effort for their dedication and good work and further commented on the significates of the proposed acquisition of the 150 acres of the former Bethlehem Steel site. In particular, Mr. Poloncarz thanked Agency staff, Legislature Mills and Lorigo, Empire State Development Corporation as well as Maria Whyte for her dedication and Mr. Federick, Mr. Swanekamp and Mr. Pawenski for their efforts and commitment toward this project.

Mr. Blue seconded the motion.

Ms. McDuffie commented that upon the ILDC's purchase of the real property, the ILDC and the Agency will control approximately 150 acres of real property and lead the effort to redevelop this property and to determine the future of the area for the benefit of all of the people of Erie County. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("AGENCY"): (i) TO ENTER INTO A FUNDING AGREEMENT FOR ECONOMIC DEVELOPMENT PURPOSES WITH THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION TO GRANT \$6,700,000 IN THE FORM OF A PARTIALLY REFUNDABLE GRANT FROM THE AGENCY'S U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT URBAN DEVELOPMENT ACTION GRANT ("UDAG") REFLOW FUND; AND (ii) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT

NYSDOT Transit Road Bridge Agreement. Mr. Cappellino recalled that members authorized the Agency to undertake a certain railroad bridge repair project on November 30, 2016. However, since that time, the New York State Department of Transportation ("NYSDOT") has determined that the project requires additional funding because cost of item bids have come in higher than what the NYSDOT originally estimated. As such the action before the Agency today is to ratify prior actions taken with respect to the project and amend the authorized request to increase funding in the amount of \$108,663.34.

Mr. Weinstein moved, and Mr. Lorigo seconded, to approve of the proposed funding. Ms. McDuffie called for the vote and the following resolution as unanimously approved:

AMENDING THE AUTHORIZING OF THE IMPLEMENTATION AND FUNDING OF A STATE "MARCHISELLI" PROGRAM AID ELIGIBLE TRANSPORTATION FEDERAL AID PROJECT TO FULLY FUND THE LOCAL SHARE OF FEDERAL AND STATE AID ELIGIBLE AND INELIGIBLE PROJECT COSTS AND APPROPRIATING FUNDS THEREFORE

CEDS Approval. Mr. Cappellino introduced this item noting that the Agency has served as the applicant for millions of dollars in federal economic development administration (“EDA”) grant funds used to set up the county-wide revolving loan fund and that in order to maintain eligibility for EDA funding, the Agency is required to produce and update what is known as the Regional Comprehensive Economic Development Strategy (“CEDS”) every five years in order to insure that the revolving loan fund is being operated in compliance with EDA regulations. Mr. Cappellino reviewed the structure of the CEDS, the rationale behind its development, the process undertaken to review and amend the CEDS, as presented to the members here today, and the next steps that must be taken upon its approval. Mr. Weinstein then moved and Mr. Poloncarz seconded, to approve of the 2016 CEDS. Ms. McDuffie called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT
AGENCY APPROVING REVISIONS AND UPDATES WITH REGARD TO
THE 2016 REGIONAL COMPREHENSIVE ECONOMIC DEVELOPMENT
STRATEGY

Policy Committee Update. Ms. McDuffie provided members with an update of the most recently completed Policy Committee meeting noting that all projects being presented for final approval to the Board today were unanimously approved by the Policy Committee. There being no comments, Ms. McDuffie directed that this report be received and filed.

INDUCEMENT RESOLUTIONS

570 Associates VI, LLC, Union & French Roads, Cheektowaga, New York. Mr. Cappellino reviewed this proposed sales tax and real property tax abatement benefits project involving the demolition of approximately 88,000 sq. ft. of an existing and abandoned retail facility and the renovation of the remaining 90,000 sq. ft. thereof. When complete, Mr. Cappellino stated that the entire complex will consist of 355,000 sq. ft., spread among four buildings, which will be used as a warehouse and distribution complex. Because no tenants have been identified, Mr. Cappellino stated the building should be considered a “spec” project and also noted that the site has been vacant for over a decade and recently re-zoned for warehouse/light manufacturing uses.

As a condition precedent of receiving financial assistance and as a material term and condition established by the Agency in connection with its approval of the project, Mr. Cappellino noted that the Company must, subject to potential termination and/or modification and/or recapture of financial assistance, submit, on at least an annual basis or as otherwise indicated below, through the termination of the PILOT Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment - the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$17,633,250.00 (which represents the product of 85% multiplied by \$20,745,000.00, being the total project cost as stated in the Company’s application for Financial Assistance).

- (ii) Employment Commitment – that, within two years of Project completion, the Company has maintained and created FTE employment at the Facility equal to 105 FTE employees representing the product of 85% multiplied by 124 (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). In an effort to confirm and verify the Company’s employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency’s “Quarterly Employment Survey” form to be made available to the Company by the Agency.
- (iii) Local Labor Commitment – that the Company adheres to and complies with the Agency’s Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency’s Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency’s Unpaid Real Property Tax Policy.

Ms. Benczkowski made a motion to approve of the project and also noted that this project is very important for the people of Cheektowaga as it will lead to the redevelopment of a vacant and blighted area within the town. Mr. Weinstein seconded the motion.

Ms. McDuffie commented that this project is a tremendous investment by the developer and commented on the difficulty of making such an investment in the absence of tenants.

Mr. Poloncarz stated he is in favor of rehabilitating this blighted area in Cheektowaga and commented on the significant number of jobs that the company has indicated it will create based on only a speculative basis.

Ms. McDuffie called for the vote and the following resolutions were unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT ACTION TO UNDERTAKE THE 570 ASSOCIATES VI, LLC (THE “COMPANY”) PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF 570 ASSOCIATES VI, 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)

APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (iv) 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 AND (B) A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (v) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

Pine Pharmaceuticals, LLC, 355 Riverwalk Parkway, Tonawanda, New York. Ms. Fiala reviewed this proposed sales tax exemption, mortgage recording tax exemption and real property tax abatement benefits project involving the acquisition of land and construction of a new 25,000 sq. ft. manufacturing facility to accommodate current and future growth of the company.

As a condition precedent of receiving financial assistance and as a material term and condition established by the Agency in connection with its approval of the project, Ms. Fiala noted that the Company must, subject to potential termination and/or modification and/or recapture of financial assistance, submit, on at least an annual basis or as otherwise indicated below, through the termination of the PILOT Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment- the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$4,760,000.00 (which represents the product of 85% multiplied by \$5,600,000.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment - that there are at least 15 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
 - the number of current FTE employees in the then current year at the Facility; and
 - that within two years after Project completion, the Company has maintained and created FTE employment at the Facility equal to 25 FTE employees [representing the sum of Baseline FTE plus 10 [the product of 85% multiplied by 12 (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)]. In an effort to confirm and verify the Company's employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency's "Quarterly Employment Survey" form to be made available to the Company by the Agency.

- (iii) Local Labor Commitment - that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency's Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency's Unpaid Real Property Tax Policy.

Ms. Gallagher-Cohen moved and Mr. Poloncarz seconded to approve of the project. Ms. McDuffie called for the vote and the following resolutions were unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT ACTION TO UNDERTAKE THE PINE PHARMACEUTICALS LLC (THE "COMPANY") PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF PINE PHARMACEUTICALS, 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) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (iv) 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 (v) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

AMENDATORY INDUCEMENT RESOLUTION

Zion Holdings, LLC, 599 Delaware Avenue, Buffalo, New York. Ms. Fiala reviewed this proposed lease term extension and PILOT extension project associated with Zion Holdings, LLC to accommodate its subleasing a space to Circuit Clinical, a New York State Start-Up NY program entity, requiring that the Agency's leasehold interest in the Zion Holdings project be designated as affiliated with the State University of New York at Buffalo ("SUNY") for the term of Circuit Clinical's Start-Up NY tax benefit period. Ms. Fiala commented that Circuit Clinical

will retain Start-Up NY tax benefits through March 2026, and because the Agency's leasehold interest in the Zion Holdings property terminates on December 31, 2022, the Agency must extend its lease agreement with Zion Holdings to match the Start-Up NY tax benefit period as described above. Ms. Fiala explained that there will be no new Agency financial assistance provided to the company, and that the PILOT Agreement will require full paid taxes, as if the Agency had no interest in the project and the company was 100% on the tax rolls, for the time period beyond the December 31, 2022 original lease agreement termination date. In addition, Ms. Fiala explained that the Agency, Zion Holdings, LLC and SUNY will be required to enter into an affiliation agreement which identifies the roles and responsibilities of all of the parties involved.

Mr. Weinstein moved and Mr. Blue seconded to approve of the actions required to be taken. Ms. McDuffie called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) AUTHORIZING THE AMENDMENT OF THE LEASE AGREEMENT AND PILOT AGREEMENT WITH RESPECT TO THE ZION HOLDINGS LLC PROJECT; (ii) AUTHORIZING THE SUB-SUBLEASE OF A PORTION OF THE ZION HOLDINGS LLC PROJECT IN RELATION TO THE START-UP NY PROGRAM AND THE SUB-SUBLEASE OF AN ADDITIONAL PORTION OF THE ZION HOLDINGS LLC PROJECT TO A TENANT UNRELATED TO THE START-UP NY PROGRAM; AND (iii) AUTHORIZING THE EXECUTION OF AN AFFILIATION AGREEMENT WITH THE STATE UNIVERSITY OF NEW YORK AT BUFFALO IN CONNECTION WITH THE AGENCY'S EXISTING ZION HOLDINGS LLC PROJECT IN RELATION TO THE START-UP NY PROGRAM

MANAGEMENT TEAM REPORTS

Niagara Blower Company, 91 Sawyer Avenue, Tonawanda, New York. Mr. Weathers updated members on recent correspondence received from Niagara Blower asking that the Agency approve of sales recapture option #3 which was thoroughly discussed at the Agency's January 2017 meeting, requiring a sales tax recapture payment in the amount of \$15,986.18. Mr. Weathers stated that on January 31, 2017, the Agency received a check from Niagara Blower in the amount of \$15,986.18 and in the accompanying letter, the company requested that the Agency accept the check as full payment of its sales tax recapture obligations. Mr. Weathers stated that he is asking the Board to approve the recapture amount of \$15,986.18 and accept Niagara Blower's check in full satisfaction of its recapture and compliance obligations to the Agency.

Mr. Poloncarz moved and Sister Roche seconded to approve of the recapture payment. Ms. McDuffie then called for the vote and the following resolution was approved unanimously with one abstention made by Ms. Gallagher-Cohen:

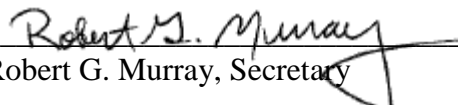
RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT
AGENCY AUTHORIZING THE RECAPTURE OF NEW YORK STATE AND
LOCAL SALES AND USE TAX EXEMPTION BENEFITS CLAIMED BY
THE NIAGARA BLOWER COMPANY

Seneca Mortgage Update. Mr. Weathers noted that the Agency received a recapture check in the amount of \$219,000 from Seneca Mortgage.

Grant Update. Mr. Weathers updated members on recent results obtained by Lori Szewczyk, Director of Grants, that have resulted in a \$300,000 grant for the proposed Angola Agricultural Commerce Park, and a \$125,000 grant for planning for the Net Zero building. Mr. Weathers thanked Ms. Szewczyk for her good work.

There being no further business to discuss, Ms. McDuffie adjourned the meeting at 9:45 a.m.

Dated: February 22, 2017


Robert G. Murray, Secretary