

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

DATE AND PLACE: July 24, 2019, at the Erie County Industrial Development Agency (the “ECIDA” or “Agency”), 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203

PRESENT: Hon. Joseph H. Emminger, Dottie Gallagher, Hon. Howard Johnson, Hon. Brian J. Kulpa, Richard Lipsitz, Jr., Brenda W. McDuffie, John J. Mudie, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen, Sister Denise Roche, Kenneth A. Schoetz and Art Wingerter

EXCUSED: Hon. Diane Benczkowski, Rev. Mark E. Blue, Hon. Bryon W. Brown, James F. Doherty, Tyra Johnson and Charles F. Specht

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

GUESTS: Robert G. Murray, Esq., General Counsel; Michael Szukala, Chair of the Joint Finance and Audit Committee

There being a quorum present at 12:06 p.m., the meeting was called to order by Ms. McDuffie.

MINUTES

The minutes of the June 26, 2019 meeting of the members were presented. Sister Denise moved and Mr. Wingerter seconded, to approve of the minutes. Ms. McDuffie called for the vote, and the minutes were then unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic presented the June 2019 financial report, noting that the balance sheet shows that the Agency finished the month with total assets of \$30.6 million and net assets of \$21.5 million. The monthly income statement shows an operating deficit of \$106,000 for June. Operating revenue was below budget by \$134,000. Operating expenses overall were under budget by \$23,000. After factoring in strategic initiatives and depreciation, there was an overall net loss of \$122,000 for the month. The year-to-date income statement shows revenues of almost \$1.2 million, being \$189,000 below budget for the year, and expenses of \$1.4 million, being \$64,000 below budget. These plus special project grants net to an operating loss of \$141,000 through June. After strategic initiatives and depreciation, there is currently a net loss of \$576,000 for the year.

Ms. McDuffie directed that the report be received and filed.

Finance and Audit Committee Update. Ms. Profic introduced Michael Szukala, Chair of the Joint Finance and Audit Committee. Mr. Szukala gave a summary of the last meeting, noting the Committee received, reviewed and compared the IDA administrative fee structure and process with those of other local IDAs and noted that the Committee determined to make no changes to the fee schedule or collection method. Ms. McDuffie directed that the report be received and filed.

At this point in time, Mr. Pridgen and Mr. Kulpa joined the meeting

2019 Tax Incentive Induced/Closing Schedule/Backlog Report. Ms. Fiala presented this report. Ms. McDuffie directed that the report be received and filed.

Policy Committee Update. Mr. Lipsitz updated members on the most recently completed Policy Committee meeting and noted that the Committee reviewed and recommends for approval all projects to be presented to the IDA board members at this meeting. Ms. McDuffie directed that the report be received and filed.

INDUCEMENT RESOLUTIONS

Buffalo High Technology Centre, Inc., 505 Ellicott Street, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax, mortgage recording tax and real property tax abatement benefits project involving the adaptive reuse of the existing 20,000 sq. ft. warehouse which was vacated by Frey Heavy Duty when they relocated approximately 5 years ago. The company will fully renovate the interior and exterior of the building and add a mezzanine component which will increase the total square footage of the building to 35,000 sq. ft. The facility will include commercial and residential components including two apartments and flexible office space, offering both short and long term workspace options. The remaining space is anticipated to house a café or similar retail offering.

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 modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below, through the conclusion of the latter of either (i) two (2) years following the construction completion date or (ii) the termination of the Agent Agreement/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 \$6,695,829.00 (which represents the product of 85% multiplied by \$7,877,447.00, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – the number of current full-time equivalent (“FTE”) employees in the then current year at the Facility; and

- that the Company has created within two years of project completion, and thereafter maintained FTE employment at the Facility equal to 3 FTE employees (representing the product of 85% multiplied by 4 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.

Mr. Pridgen noted he met with Uniland and noted he was against the project when it only had one apartment, which Mr. Pridgen believes is against the spirit of 485(a) but thanked Uniland for adding a second apartment.

Mr. Nellis stepped out of the meeting prior to the vote.

Mr. Pridgen moved and Mr. Emminger seconded to approve the Project as proposed. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF BUFFALO HIGH TECHNOLOGY CENTRE INC. 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 PROJECT
AGREEMENT, AND RELATED DOCUMENTS

Derby Warehousing, LLC/KPM Exceptional, 1393 Wisconsin Road, Derby, New York.
Ms. Fiala reviewed this proposed sales tax and real property tax benefits project involving KPM's decision to expand in New Jersey or Derby, KPM decided to expand the Derby facility by constructing a 27,700 sq. ft. addition. There is currently an existing 28,000 sq. ft. building occupied by KPM and the expansion will represent a doubling of the company's footprint in the Town of Evans.

Mr. Nellis returned to the meeting.

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 modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on 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 \$1,132,200.00 (which represents the product of 85% multiplied by \$1,332,000.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment - that there are at least 6 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 the Company has maintained and created FTE employment at the Facility equal to 7 FTE employees [representing the sum of Baseline FTE plus 1 (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 moved and Mr. Schoetz seconded to approve the Project as proposed. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF DERBY WAREHOUSING 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 AND (B) 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 PROJECT AGREEMENT, AND RELATED DOCUMENTS

Fisher Price, Inc., 636 East Girard Avenue, East Aurora, New York. Ms. Fiala reviewed this proposed sales tax benefits project involving the renovations to the Team Center which focuses on Mattel's infant and preschool toy development. The Play Lab space will be renovated into a Center of Early Childhood Development research. The project is intended to upgrade the functionality and branded-look of the Team Center.

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 modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below through the conclusion of the latter of two (2) years following either (i) the construction completion date, or (ii) the termination of the Agent 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 \$3,421,299.00 (which represents the product of 85% multiplied by \$4,025,058.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment - that there are at least 274 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 the Company has maintained and created FTE employment at the Facility equal to 278 FTE employees [representing the sum of 274 Baseline FTE plus 4 the product of 85% multiplied by 5 (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. McDuffie spoke in favor of the project.

Mr. Lipsitz moved and Sister Denise seconded to approve the Project as proposed. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF FISHER-PRICE, INC., 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 SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT; AND (v) AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

COMPLIANCE

Shevlin Land & Cattle Co. and Upstate Pharmacy. Mr. Cappellino reviewed the Upstate Pharmacy and Shevlin Land & Cattle Co. recapture issue. Mr. Cappellino noted that Upstate Pharmacy and Shevlin Land & Cattle Co. fell 11% short of their job creation requirements in 2018. Mr. Cappellino noted that the Policy Committee recommended that the Board approve Option #2 for both companies. Accordingly, under Option #2, the Board would recapture \$3,957.33 in PILOT benefits from Shevlin Land & Cattle Co. and \$262 in sales tax benefits from Upstate Pharmacy.

Mr. Pridgen moved and Mr. Poloncarz seconded to approve of Option #2 for Upstate Pharmacy and Shevlin Land & Cattle Co. which is a pro-rata recapture based on employment shortfall. Ms. McDuffie then called for the vote and the motion was unanimously approved.

MANAGEMENT TEAM REPORTS

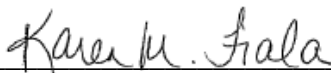
Mr. Weathers noted upcoming UCI WNY Conference.

Mr. Weathers then asked Board members to enter into an attorney-client privilege discussion to seek legal advice. Mr. Emminger moved and Mr. Kulpa seconded to enter into an attorney-client privilege session. Ms. McDuffie called for the vote, which was unanimously carried, and the Agency entered into an attorney-client privilege meeting at 12.31 p.m.

Mr. Poloncarz moved and Mr. Mudie seconded to conclude the attorney-client privilege session, Ms. McDuffie called for the vote, and the attorney-client privilege session was terminated at 12:44 p.m.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 12:44 p.m.

Dated: July 24, 2019



Karen M. Fiala, Secretary