

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

DATE AND PLACE: May 26, 2021, held via telephone conference. Governor Cuomo's Executive Order 202.1, as amended from time to time, issued in response to the Coronavirus (COVID-19) crisis, suspended Article 7 of the Public Officers Law to the extent necessary to permit any public body to take actions without permitting in public in-person access to such meetings and authorized such meetings to be held remotely by conference call or other similar service, provided the public has the ability to view or listen to such proceedings and that the meeting is recorded and transcribed.

LIVE STREAMED: This meeting is being live-streamed and made accessible on the ECIDA's website at www.ecidany.com.

PRESENT: Denise Abbott, Hon. Diane Benczkowski, Rev. Mark E. Blue, Dottie Gallagher, Hon. Howard Johnson, Tyra Johnson, Richard Lipsitz, Brenda W. McDuffie, Hon. Mark C. Poloncarz, Sister Denise Roche and Kenneth A. Schoetz

EXCUSED: Hon. Bryon W. Brown, James Doherty, Hon. Joseph Emminger, Hon. Brian Kulpa, Hon. Glenn R. Nellis, Hon. Darius G. Pridgen, Paul Vukelic and Renee Wilson

OTHERS PRESENT: John Cappellino, President & CEO; Mollie Profic, Chief Financial Officer; Karen M. Fiala, Vice President/Secretary; Atiqah Abidi, Assistant Treasurer; Gerald Manhard, Chief Lending Officer; Jamee Lanthier, Compliance Officer; Beth O'Keefe, Business Development Officer; Grant Lesswing, Business Development Officer; Brian Krygier, Systems Analyst; Carrie Hocieniec, Administrative Coordinator; Robbie Ann McPherson, Director, Marketing & Communications, Pat Smith, Bookkeeper; Lori Szewczyk, Director of Grants; and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC

GUESTS: Andrew Federick, Erie County Senior Economic Development Specialist; Peter Wilson and Adrienne Schreier, on behalf of 283 Ship Canal/Sonwil Distribution; Eric Ekman, on behalf of MCG Real Estate Holdings; Kevin McAuliffe and Karen D'Antonio, on behalf of Barclay Damon; and Kevin Lawson and Chris Hoover, on behalf of KSL Diagnostics and Trevor Griffis

There being a quorum present at 12:05 p.m., the Meeting of the Board of Directors of the Erie County Industrial Development Agency was called to order by Chair McDuffie.

MINUTES

The minutes of the April 28, 2021 meeting of the members were presented. Sister Denise moved and Mr. Blue 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 noted that the ECIDA finished the month of April with total assets of \$28.9M and net assets were \$20.4M. The monthly income statement shows a net loss of \$187,000 for April. Operating revenue of \$73,000 was below the monthly budgeted total, due mainly to timing of administrative fees. Operating expenses of \$212,000 were under budget by \$5,000. Under Special Project Grants, \$49,000 of PPE grant funds were disbursed to 10 grantees in April. The year-to-date Income Statement shows revenues of \$658,000, including administrative fee revenue of \$394,000. Through April, overall revenues are below budget by \$219,000, again mainly due to timing of administrative fee receipts. Expenses of \$847,000 are \$31,000 below budget. Special project grants include EDA CARES Act funding passed through to RDC of \$2.2M and distributions of PPE grant funding. Ms. Profic pointed out that the \$1M allocated for the PPE grant program was done so out of the IDA's excess general funds that had built up over the years, essentially coming out of the savings account. Those grants must be expensed in the current year and we can expect to continue to see a net loss going forward. After taking into account the strategic initiatives and depreciation, there is currently a net loss of \$644,000 for the year. Ms. McDuffie directed that the report be received and filed.

2021 Tax Incentive Induced/Closing Schedule/Estimated Real Property Tax Impact. Ms. Fiala presented this report. Ms. McDuffie directed that the report be received and filed.

At this point in time, Ms. Gallagher joined the meeting.

Approval of COVID-19 Disaster Emergency Grant Application. Ms. McDuffie asked if any member had a potential conflict of interest with any of the various applicants and no member identified any such conflict. Ms. O'Keefe reviewed the twelve (12) various grant applications presented to the members.

Mr. Johnson moved and Ms. Benczkowski seconded to approve the twelve (12) grant applications. Ms. McDuffie called for the vote and the following twelve (12) grant applications were approved with Ms. Johnson abstaining from voting on the BEAM- Buffalo Area Engineering Awareness for Minorities application and Ms. Gallagher abstaining from voting on the Buffalo Niagara Convention & Visitors Bureau, Inc. and the Buffalo Niagara Convention Center Management Corporation applications.

1. Alleyway Theatre, Inc.
2. BEAM-Buffalo Area Engineering Awareness for Minorities

3. Buffalo Niagara Convention & Visitors Bureau, Inc.
4. Buffalo Niagara Convention Center Management Corporation
5. Central Terminal Restoration Corp.
6. D&M Refrigeration, Inc.
7. Jos. A. Sanders & Sons, Inc.
8. Niagara Lubricant Company Inc.
9. Ricotta & Ricotta Inc. dba Mangia Ristorante & Caffé
10. Roach, Lennon & Brown, PLLC
11. Surianello General Concrete Contractor, Inc.
12. The Mog Inc.

Election of Officers/Committee Appointments. Mr. Poloncarz, Chair of the Nominating Committee, reviewed the entire nominating slate but noted that Mr. Cummings has recently asked to be withdrawn from consideration of serving on the Policy Committee. Mr. Blue moved and Mr. Lipsitz seconded, to approve of the nominating slate as presented. Ms. McDuffie called for the vote and the aforementioned motion was unanimously approved. Ms. Gallagher then moved and Mr. Johnson seconded, to approve of Paul Vukelic replacing Mr. Cummings on the Policy Committee and accepting Mr. Cummings resignation to the Policy Committee. Ms. McDuffie called for the vote and the aforementioned motion was unanimously approved.

Policy Committee Update. Mr. Lipsitz presented the report and noted the Policy Committee reviewed and approved the two projects being considered by the members at today's meeting. Ms. McDuffie directed that the report be received and filed.

INDUCEMENT RESOLUTION

283 Ship Canal Parkway, LLC, 283 Ship Canal Parkway, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax exemption and mortgage recording tax exemption, project which consists of the construction of a 335,000 sq. ft. warehouse/distribution facility which will allow Sonwil Distribution to competitively price their warehouse/distribution services and not only accommodate current customer demand, but also grow such current customers' presence in the region while growing the amount of logistical services to prospective customers and industries.

As a condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company covenants and agrees and understands that it 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, through the conclusion of the later of two (2) years following either (x) the construction completion date, or (y) 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 \$44,441,607 (which represents the product of 85% multiplied by \$52,284,244, being the total project cost as stated in the Company's application for Financial Assistance).

- (ii) Employment Commitment – the number of current FTE employees in the then current year at the Facility; and
 - That within two years of the construction completion date, the Company has maintained and created, or caused to be maintained and be created, FTE employment at the Facility equal to 64 FTE employees [representing the product of 85% multiplied by 76 (being the total number of new FTE employee positions as proposed to be created by the Company as stated in its Application)]. In an effort to confirm and verify the Company’s compliance with the employment commitment, 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. Poloncarz moved and Mr. Blue seconded to approve the Project. 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 283 SHIP CANAL 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, AND (B) A MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

MCG Real Estate Holdings, LLC, 293 Grote Street, Buffalo, New York. Ms. Fiala reviewed this proposed sales tax exemption, mortgage recording tax exemption, and real property tax abatement benefit project which consists of the adaptive reuse of the former Buerk Tool facility noting the building has been vacant for 2 years and underutilized for approximately 18 years. The building, once redeveloped, will house 33 apartments with 12 of the one-bedroom units to be offered at 80% of the adjusted median income (“AMI”).

As a condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company covenants and agrees and understands that it 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 \$7,019,527 (which represents the product of 85% multiplied by \$8,258,268, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there is at least 1 existing part time equivalent (“PTE”) employee located at, or to be located at, the Facility as stated in the Company’s application for Financial Assistance (the “Baseline PTE”); and
 - the number of current employees in the then current year at the Facility; and
 - that within two (2) years of Project completion, the Company has maintained and created PTE employment at the Facility equal to 1 PTE employee. 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. Lipsitz moved and Mr. Poloncarz seconded to approve the Project. 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 MCG REAL ESTATE HOLDINGS, 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 PROJECT AGREEMENT, AND RELATED DOCUMENTS

COMPLIANCE

Local Labor Waiver for Steel Winds, LLC. Mr. Cappellino reviewed the Local Labor Waiver request for Erie Wind, LLC and Niagara Wind Power, LLC and the related third-party review of the request, commissioned by ECIDA, to confirm warranty related and special skill/required training related claims made by the companies underlying the request for the waiver.

Mr. Lipsitz thanked Mr. Cappellino for his leadership in implementing the Local Labor Wavier policy. Mr. Lipsitz noted it’s unfortunate local laborers do not have the required training to undertake the work, but given that the Agency will require that the companies facilitate worker training to ensure properly trained workers can become available for future work, there really is no other option available that will otherwise allow the projects to be undertaken.

Mr. Poloncarz moved and Mr. Johnson seconded to approve of the Local Labor Waiver as requested. Ms. McDuffie called for the vote and the following resolution was unanimously approved.

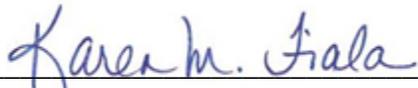
RESOLUTION AUTHORIZING A WAIVER OF THE LOCAL LABOR WORKFORCE CERTIFICATION POLICY AS APPLICABLE TO THE ERIE WIND, LLC PROJECT AND THE NIAGARA WIND POWER, LLC PROJECT

MANAGEMENT TEAM REPORT

Mr. Cappellino provided the report. Ms. McDuffie directed that the report be received and filed.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 12:41 p.m.

Dated: May 26, 2021



Karen M. Fiala, Secretary