

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

- DATE AND PLACE:** April 28, 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](http://www.ecidany.com).
- PRESENT:** Denise Abbott; Hon. Diane Benczkowski; Rev. Mark E. Blue; Hon. Joseph Emminger; Hon. Howard Johnson; Brenda McDuffie; Hon. Glenn R. Nellis; Hon. Mark Poloncarz; Hon. Darius Pridgen; Sister Denise Roche and Kenneth A. Schoetz
- EXCUSED:** Hon. Bryon W. Brown; James Doherty; Dottie Gallagher; Tyra Johnson; Hon. Brian Kulpa; Richard Lipsitz; Paul Vukelic and Renee Wilson
- OTHERS PRESENT:** John Cappellino, President & CEO; Mollie Profic, Chief Financial Officer; Karen M. Fiala, Vice President/Secretary; Grant Lesswing, Business Development Officer; Brian Krygier, Systems Analyst; Carrie Hocieniec, Administrative Coordinator; Robbie Ann McPherson, Director of Marketing and Communications; Jamee Lanthier, Compliance Officer; Beth O’Keefe, Business Development Officer; Atiqa Abidi, Assistant Treasurer; Pat Smith, Bookkeeper; Lori Szewczyk, Director of Grants; Chris Canada, Bond Counsel Hodgson Russ and Robert Murray, Esq., General Counsel/Harris Beach PLLC
- GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist; Marc Wzykowski, Kellena Kane, Peter Sayadoff, Michael Montante on behalf of Uniland Development and Geoffrey Pritchard on behalf of Buffalo Public School District

There being a quorum present at 12:07 p.m., the Meeting of the Board of Directors of the Erie County Industrial Development Agency was called to order by Chair McDuffie.

At this point in time, Mr. Blue joined the meeting.

Approval of COVID-19 Disaster Emergency Grant Application. Ms. McDuffie confirmed that she has conflict with Pappy Martin Legacy Jazz Collective application and will abstain from taking any action or participating in any dialogue with respect to this particular application. No other member expressed having a potential conflict of interests with any of the various applicants. Ms. O’Keefe reviewed the eleven (11) various grant applications presented to the members.

Mr. Emminger moved and Mr. Johnson seconded to approve the eleven (11) grant applications. Ms. McDuffie called for the vote and the following eleven (11) grant applications were approved with Ms. McDuffie abstaining from voting on the Pappy Martin Legacy Jazz Collective application, for COVID-19 Disaster Emergency Grants.

1. Buffalo City Swim Racers
2. Buffalo Collegiate Charter School
3. Buffalo Film Works
4. Center for Exploratory and Perceptual Arts, Inc.
5. Country Club Catering of WNY Inc.
6. ECMC Foundation, Inc.
7. Fostering Greatness Inc.
8. Kleinhan’s Music Hall
9. Pappy Martin Legacy Jazz Collective
10. Trend Setters Beauty Salon
11. Young Audiences of Western New York

## **APPROVAL OF FUNDING AGREEMENT WITH ILDC**

Mr. Cappellino presented a report outlining a proposed funding agreement with the Buffalo and Erie County Industrial Land Development Corporation (“ILDC”).

Mr. Poloncarz moved and Sister Denise seconded to approve of the Funding Agreement with the ILDC. Ms. McDuffie then called for the vote and the following resolution was then unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (“AGENCY”) TO ENTER INTO A FUNDING AGREEMENT WITH THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (“ILDC”) FOR CONSTRUCTION OF PUBLIC ROADWAY, WATER AND SEWER INFRASTRUCTURE WITHIN AND UPON LANDS OWNED BY THE ILDC AT THE FORMER BETHLEHEM STEEL SITE IN LACKAWANNA, NEW YORK, IN AN AMOUNT NOT TO EXCEED \$1,000,000 ON A REVOLVING BASIS FROM THE AGENCY’S U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT URBAN DEVELOPMENT ACTION GRANT (“UDAG”) REFLOW FUND

## INDUCEMENT RESOLUTION

BLD VII, LLC, 8 Dona Street, Lackawanna, New York. Mr. Cappellino reviewed this proposed sales tax exemption, mortgage recording tax exemption, and real property tax abatement benefit project which consists of the acquisition of approximately 9 acres of land to be purchased from the Buffalo and Erie County Industrial Land Development Corporation (“ILDC”) and the construction of a 151,200 sq. ft. industrial spec building. The building would be offered as a multi-tenant facility as there presently exists a demand for this type of space.

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 \$12,385,168 (which represents the product of 85% multiplied by \$14,570,786, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 35 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 (2) years of Project completion, the Company has maintained and created FTE employment at the Facility equal to 35 FTE employees [representing the product of (x) 41 FTE employee positions (being the 41 new FTE employee positions proposed to be created by the Company as stated in its Application) and (y) 85%]. 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. Poloncarz moved and Mr. Nellis 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 BLD VII, 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

### **SPECIAL RESOLUTION**

Joint Schools Construction Board, 2021 Refunding of Series 2011A and 2011B. Ms. Fiala reviewed the proposed refunding of the Series 2011A and 2011B bonds for the Joint School Construction Board on behalf of the City of Buffalo and the City School District of the City of Buffalo and their agent, the Joint Schools Construction Board in order to finance various public school facilities and to assist in the acquisition, renovation, construction, reconstruction, improvement, equipping and furnishing of such public school facilities within the City of Buffalo in order to implement the comprehensive redevelopment of the City's public schools.

Mr. Johnson moved and Mr. Pridgen seconded to approve the issuance of the bonds. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE ISSUANCE OF REFUNDING BONDS TO REFUND ALL OR A PORTION OF THE SERIES 2011A BONDS AND THE SERIES 2011B BONDS WITH RESPECT TO ITS PROJECT FOR THE CITY SCHOOL DISTRICT OF THE CITY OF BUFFALO AND AUTHORIZING OTHER MATTERS IN CONNECTION THEREWITH

## COMPLIANCE

Employment Impact COVID-19 Pandemic. Mr. Cappellino advised that the Agency's Financial Assistance Recapture Policy did not contemplate the severe adverse negative business and regional economic impacts that resulted from the COVID-19 global pandemic. To help stabilize Erie County businesses and our regional economy that has been and continues to be harmed by the COVID-19 global pandemic, it is recommended that the Agency consider adding to its financial assistance recapture policy by adopting a "Special COVID Waiver" with respect to the potential recapture of Agency financial assistance for the 2020 calendar year.

The Special COVID Waiver would waive implementation of recapture procedures for companies that suffered employment losses or that were unable to meet required job creation goals due to documented COVID-19 impacts. Job retention/creation shortfalls will be verified utilizing the Agency's quarterly employment reporting procedures. Companies which did not maintain or meet employment goals would be contacted by Agency staff to document and determine that reasons for missing such job creation/retention requirements were related to COVID-19 impacts. Company specific and overall industry impacts would be taken into consideration and upon a determination by the Agency's President/CEO, in consultation with the Chair, that 2020 job retention/creation requirements were not met due to documented COVID-19 impacts, implementation of Agency recapture protocols would then be waived for the 2020 calendar year.

Sister Denise moved and Mr. Poloncarz seconded to approve of the Special COVID Waiver. Ms. McDuffie called for the vote and the following resolution was unanimously approved.

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("AGENCY") TEMPORARILY MODIFYING THE AGENCY'S POLICY FOR TERMINATION AND/OR MODIFICATION OF AGENCY FINANCIAL ASSISTANCE AND RECAPTURE OF AGENCY FINANCIAL ASSISTANCE PREVIOUSLY GRANTED

## MINUTES

The minutes of the March 24, 2021 meeting of the members were presented. Mr. Nellis moved and Ms. Abbott 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 March with total assets of \$29M (includes unrestricted cash of over \$7.1M available for Agency operations) and net assets were \$20.8M. The monthly income statement shows a net loss of \$156,000 for March. Operating revenue of \$153,000 was below monthly budget by \$70,000, due mainly to timing of administrative fees received during the month. Operating expenses of \$233,000 were about \$16,000 over budget. On the General Office expenses line, insurance costs in March were inflated from the timing of invoicing related to renewed policies. On the Professional Services line, audit

costs for the month were in excess of budget, again due to timing of invoicing for those services. Under Special Project Grants, \$67,000 of PPE grant funds were disbursed to 15 grantees in March. The year-to-date Income Statement shows revenues of \$585,000, including administrative fee revenue of \$385,000. Through March, overall revenues are below budget by \$74,000. Expenses of \$636,000 are \$28,000 below budget. Special project grants include mainly distributions of PPE grant funding. Ms. Profic pointed out that the \$1M allocated for the PPE grant program was done so out of the ECIDA'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 \$286,000 for the year.

At this point in time, Mr. Pridgen left the meeting.

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

Finance and Audit Committee Update. Ms. Profic noted that the Committee met on April 19<sup>th</sup> for the purpose of reviewing and recommending the Joint School Construction Board project ECIDA Bond refunding. The Committee recommend approval of the refunding. 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.

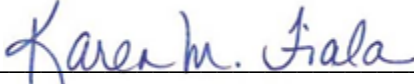
Policy Committee Update. Mr. Cappellino noted the Policy Committee's prior review and approval of the one project being considered by the members at today's meeting. Ms. McDuffie directed that the report be received and filed.

## **MANAGEMENT TEAM REPORT**

Mr. Cappellino provided the report.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 12:43 p.m.

Dated: April 28, 2021

  
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Karen M. Fiala, Secretary