

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

- DATE:** March 23, 2022
- LIVE STREAMED:** This meeting is being live-streamed and made accessible on the ECIDA’s website at www.ecidany.com.
- PRESENT:** Denise Abbott, Rev. Mark E. Blue, Dottie Gallagher, Hon. Howard Johnson, Tyra Johnson, Hon. Brian Kulpa, Richard Lipsitz, Brenda W. McDuffie, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen, Sister Denise Roche and Renee Wilson
- EXCUSED:** Hon. Diane Benczkowski, Hon. Bryon W. Brown, James Doherty, Hon. Joseph Emminger, Kenneth A. Schoetz and Paul Vukelic
- OTHERS PRESENT:** John Cappellino, President & CEO; Mollie Profic, Chief Financial Officer/Assistant Secretary; Beth O’Keefe, Vice President of Operations; Atiqah Abidi, Assistant Treasurer; Gerald Manhard, Chief Lending Officer/Assistant Secretary; Grant Lesswing, Director of Business Development; Andrew Federick, Business Development Officer; Brian Krygier, Director of Information Technology; Carrie Hocieniec, Operations Assistant; Robbie Ann McPherson, Director of Marketing & Communications, Sean Fallon, Project Manager; Pat Smith, Senior Bookkeeper; and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC
- GUESTS:** Maria Whyte, Deputy County Executive, Erie County; Zachary Evans, Erie County; Lisa Hicks and Alex Carducci on behalf of the City of Buffalo; Karen Brown on behalf of the Buffalo Niagara Partnership and Matt Connors on behalf of 471 Elmwood Avenue, LLC

There being a quorum present at 12:02 p.m., the meeting of the members of the Erie County Industrial Development Agency (the “ECIDA” or “Agency”), was called to order by Chair McDuffie.

MINUTES

The minutes of the February 23, 2022 meeting of the members were presented. Mr. Nellis moved and Sister Denise 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 presented the February 2022 financial report. The balance sheet shows the month ended with total assets of \$30.3M (includes unrestricted cash of \$7.3M available for Agency operations) and net assets of \$20.8M. The monthly income statement shows net income of \$8,000 for February. Operating revenue of \$118,000 was below the monthly budget of \$100,000, due mainly to timing of administrative fees received during the month. Operating expenses of \$222,000 were about \$4,000 under budget. Under Special Project Grants, \$125,000 of grant revenue was received in February. After depreciation, there was net income of \$8,000 for the month. The year-to-date Income Statement shows revenues of \$289,000, including administrative fee revenue of \$154,000. We are at about half of our budget for the first two months of the year. Expenses of \$440,000 are \$20,000 below budget. Special project grant revenue nets to \$116,000. After depreciation, there is currently a net loss of \$55,000 for the year. Ms. McDuffie directed that the report be received and filed.

Finance and Audit Committee Update and Committee Self-Evaluation. Ms. Profic reviewed the memo summarizing the joint Finance & Audit Committee meeting held on March 16. Our auditors from Freed Maxick presented the draft 2021 audited financial statements. The three main points of the presentation were an unmodified (clean) opinion on the financial statements, there were no uncorrected audit adjustments, and there were no material weaknesses or significant deficiencies noted (no management letter comments). The Committee also reviewed and recommend the following for approval: 2021 Public Authorities Report, 2021 Investment Reports, Investment & Deposit Policy, Committee Charter, Committee Self-Evaluation, Management's Assessment of the Effectiveness of Internal Controls, and Corporate Credit Card Policy with no suggested changes.

The Committee Self-Evaluations were presented. Ms. Profic stated that each year the Committee completes a self-evaluation, based on the Committee Charter. In 2021, the Committee convened a total of five times and fulfilled its duties as documented.

Audited Financial Statements. Ms. Profic provided the draft 2021 audited financial statements and report to the Board, which documents the auditors' required communications on, a summary of accounting estimates made within the financials, some recently issued accounting standards, and the management letter noting no significant deficiencies or material weaknesses. Ms. Profic mentioned an unmodified opinion was issued on the statements. Significant estimates for ECIDA include depreciation of capital assets and account for investments. GASB Statement No. 87 regarding Leases will be effective for the 2022 reporting year, which has been in the works for a few years. The Representation Letter that she will sign once the audit is approved by the Board will be made a part of this final report. As a public authority, the Agency's financial statements are prepared based on Governmental Accounting Standards and include a Management's Discussion and Analysis section, which provides a condensed overview of the statements. The statements of net position (balance sheets), show total assets of \$30.9M at December 31, 2021, an increase of \$2.6M from 2020. Most of the Agency's assets are current, with cash being the largest portion at \$18.6M. This is consistent with 2020, and Ms. Profic noted that of that cash balance, \$7.8M is unrestricted. The largest increase from year to year was restricted cash under noncurrent assets. The \$2.6M increase reflects the contribution of PILOT payments into PIF funds, with ECIDA acting as the administrator of these funds. This increase in

restricted cash directly correlates to the increase in funds held on behalf of others, which at \$8.7M is also an increase of \$2.6M from 2020. The Agency's net position is allocated into three buckets: investment in capital assets, restricted, and unrestricted. While the total net position decreased from \$21.1M in 2020 to \$20.9M in 2021, she pointed out that the unrestricted portion of net assets actually increased by about \$95,000. This is a result of a \$201,000 decrease in net position in 2021 driven largely by a net loss in the UDAG fund, which reduced the restriction portion of net position. The statements of revenues, expenses and changes in net position (income statements) shows how we arrived at the decrease in net position. She also presented the income statement broken out by fund. In the general fund, operating revenues were \$3.3M, due mostly to \$2.4M of administrative fee revenue. We had one of our strongest financial years in recent memory in 2021, surpassing our administrative fee revenue budget by over \$600,000. General fund operating expenses were consistent at \$2.7M in 2021. Salaries and benefits decreased \$99,000 (-5%) due to lower employee benefit costs. General and administrative expenses increased \$82,000 (13%) due to increases in insurance costs, professional fees, and public notices. Before special project grants, there was operating income of \$568,000 in the general fund. Special project grants netted to \$561,000 of expenses in 2021. \$5.2M of the revenue and expense is EDA CARES Act funding passed through ECIDA to RDC. Ms. Profic noted this because ECIDA will also be subject to a single audit for this grant, as the award recipient. She will work with Freed Maxick to get that completed in the next couple of months. There were also \$559,000 of PPE grants disbursed in 2021. In the UDAG Fund, there were operating expenses of \$35,000, and \$183,000 of net special project expenses. So while there is an overall net loss of \$201,000 for the year, it is mainly a result of funds spent for assisting local businesses through the PPE Grant program. The cash flows statement detail the changes in cash from year to year. The remainder of the financials are the notes, and also supplementary information. These drafts were reviewed and discussed in detail with the Finance & Audit Committee on March 16, and they recommended approval to the Board.

Ms. Gallagher moved and Mr. Lipsitz seconded to approve of the 2021 Audited Financial Statements. Ms. McDuffie then called for the vote and the 2021 Audited Financial Statements were unanimously approved.

2021 Investment Report. Ms. Profic reviewed this report which is required by Public Authorities Law and includes ECIDA's investment guidelines, the results of our annual audit, and detail of investment income and fees for the year. One note that it is in draft form pending the date of the auditor's report and displays the accounts held by the Agency. The majority of cash accounts are restricted for the purposes listed. Investment Income of \$9,800 was earned on these accounts during 2021 (compared to \$50,000 in 2020), and no fees were paid. This report was reviewed by the Finance & Audit Committee at their March 16 meeting and recommended to the Board for approval.

Mr. Nellis moved and Ms. Abbott seconded to approve of the 2021 Investment Report. Ms. McDuffie then called for the vote and the 2021 Investment Report was unanimously approved.

Governance Committee. Ms. Profic presented a review of the most recently completed Governance Committee meeting. Ms. McDuffie directed that the report be received and filed.

2022 Tax Incentive Induced/Closing Schedule/Estimated Real Property Tax Impact. Ms. O’Keefe presented this report to the members. Ms. McDuffie directed that the report be received and filed.

Approval of Board Certification of RLF Plan CARES Act. Mr. Manhard discussed this matter with members.

Mr. Lipsitz moved and Ms. Wilson seconded to certify that the CARES ACT RLF is being operated consistent with the Loan Administrative Plan. Ms. McDuffie then called for the vote and the following resolution was unanimously approved.

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE “RLF BOARD” OR “AGENCY”) IN CONNECTION WITH AN ANNUAL CERTIFICATION TO BE MADE UNDER THE STANDARD TERMS AND CONDITIONS AND ADMINISTRATIVE MANUAL REQUIREMENTS OF THE FEDERAL ECONOMIC DEVELOPMENT ADMINISTRATION

Agreement to Authorize Execution and Delivery of Community Development Block Grant (CDBG) Sub-Recipient Agreement. Mr. Cappellino discussed this matter with members noting that the ECIDA will also sub-sub grant the RLF to the ILDC to administer the RLF.

Ms. Gallagher moved and Mr. Blue seconded to approve of the CDBG Sub-Recipient Agreement. Ms. McDuffie then called for the vote and the following resolution was unanimously approved.

RESOLUTION AUTHORIZING (i) THE ADOPTION, NEGOTIATION AND EXECUTION OF A SUB-RECIPIENT AGREEMENT BETWEEN THE COUNTY OF ERIE AND THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY RELATIVE TO THE CONTINUED RECEIPT AND ADMINISTRATION OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS (“CDBG FUNDS”); (ii) AUTHORIZING THE ALLOCATION OF \$367,387 OF SUCH CDBG FUNDS TOWARDS THE AGENCY’S MICROENTERPRISE LOAN FUND; and (iii) AUTHORIZING THE SUB-SUBGRANT OF THE CDBG FUNDS TO THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (“ILDC”) FOR ADMINISTRATION OF SAME IN A MANNER CONSISTENT WITH THE MICROENTERPRISE LOAN FUND

Approval of Assignment of Assumption of START-UP NY Affiliation Agreement and related License Agreements. Mr. Manhard discussed this matter with the members.

Mr. Lipsitz moved and Sister Denise seconded to approve of the Assignment and Assumption of the START-UP NY Affiliation Agreement and related License Agreements. Ms. McDuffie then called for the vote and the following resolution was unanimously approved.

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY CONSENTING TO AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS WITH RESPECT TO THE

ASSIGNMENT AND ASSUMPTION OF THE QUEEN CITY ENCORE LLC
START-UP NY PROGRAM PROJECT

Approval of Buffalo Niagara Partnership Diversity Equity and Inclusion Study Funding Request. Mr. Cappellino discussed this matter with the members. Ms. Brown, on behalf of the Buffalo Niagara Partnership (BNP), spoke on behalf of the BNP and its diversity equity and inclusion study. Ms. Gallagher recused herself from participating in discussing the project and stated she would abstain from voting on the proposal.

Mr. Pridgen moved and Mr. Poloncarz seconded to approve of the BNP diversity equity and inclusion study funding request, and the following resolution authorizing the funding of the BNP diversity equity and inclusion study funding request was then unanimously approved, with Ms. Gallagher abstaining.

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (“AGENCY”) TO ENTER INTO A FUNDING AGREEMENT FOR ECONOMIC DEVELOPMENT PURPOSES WITH THE BUFFALO NIAGARA PARTNERSHIP (“BNP”) IN THE AMOUNT OF \$15,000 TO SUPPORT THE BNP’S 2022 BNP DIVERSITY EQUITY AND INCLUSION STUDY

Policy Committee Update. Mr. Lipsitz provided a review of the most recently completed Policy Committee meeting. Ms. McDuffie directed that the report be received and filed.

INDUCEMENT RESOLUTION

471 Elmwood Group, LLC, 471 Elmwood Avenue, Buffalo, New York. Ms. O’Keefe reviewed this proposed sales tax exemption benefit project which consists of rehabilitation of the facility and the winterizing of the building through various joist replacements thus preventing further damage. This project will offer 5,500 sq. ft. of first floor commercial/retail space and 5,500 sq. ft. of second floor residential units with one unit being offered at 80% of AMI. Parking will be in the rear of the building.

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

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 conclusion of the later 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 \$3,051,500 (which represents the product of 85% multiplied by \$3,590,000, 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 full time equivalent (“FTE”) employee 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.
- (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 Ms. Gallagher 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 471 ELMWOOD GROUP, 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 SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

REVIEW AND ADOPTION OF POLICIES, REPORTS AND COMMITTEE CHARTERS.

2021 Mission Statement, Performance Measures and Results. Ms. O’Keefe reviewed the 2021 Mission Statement and related results. Mr. Lipsitz moved and Mr. Nellis seconded to approve of the 2021 Mission Statement and results. Ms. McDuffie called for the vote and the 2021 Mission Statement and results were unanimously approved.

2022 Mission Statement and Performance Measures. Ms. O’Keefe reviewed the 2022 Mission Statement. Mr. Lipsitz moved and Mr. Nellis seconded to approve of the 2022 Mission Statement. Ms. McDuffie called for the vote and the 2022 Mission Statement and Performance Measures were unanimously approved.

2021 Public Authorities Report. Ms. Profic noted that as a Public Authority of the State of New York, ECIDA and its affiliates are required to comply with the NYS Public Authorities Law and submit a comprehensive annual report including information on several topics. Several of the items are covered by other documents, like the operations and accomplishments and financial statements, which are noted throughout the document. The Mission Statement & Performance Measurements are updated each year with actual results (and was just reviewed) and is part of this report. Many of the items included are standard from year to year and are also approved or re-adopted by the Board annually. Section 13 was updated for 2021 to include the work underway at ILDC-owned properties, ECIDA's COVID-19 PPE grant program and the loans made under the recently established CARES Act revolving loan fund. Attachments include outstanding bond information, salary & benefit information, projects undertaken by each entity, our Property Report, Board Member attendance, and the Procurement Reports for each entity. Once approved, Mr. Cappellino and Ms. Profic will sign the certification and the report will be posted to our website. This report was provided to the Governance Committee for review and reviewed by the Finance & Audit Committee at their meeting on March 16 and has been recommended to the Board for approval.

Mr. Lipsitz moved and Mr. Nellis seconded to approve of the 2021 Public Authorities Report. Ms. McDuffie called for the vote and the 2021 Public Authorities Report was unanimously approved.

Fee Structure Policy. Mr. Cappellino reviewed the Fee Structure Policy. Mr. Lipsitz moved and Mr. Nellis seconded to approve of the Fee Structure Policy. Ms. McDuffie called for the vote and the Fee Structure Policy was unanimously approved.

RE-ADOPT POLICIES AND CHARTERS

Ms. McDuffie noted that Items 5-20 on the agenda were reviewed by counsel, the Board Committees recommended no changes, and as such, the staff recommends that the policies and charters items numbered 5-20 be approved without any changes. Ms. Gallagher moved and Sister Denise seconded to approve of the various polices and charters as itemized below. Ms. McDuffie called for the vote and the following policies and charters were then unanimously approved:

- Board Member Compensation, Reimbursement & Attendance Policy
- Code of Ethics & Conflict of Interest Policy
- Corporate Credit Card Policy
- Defense & Indemnification Policy
- Employee Compensation Program
- Finance & Audit Committee Charter
- Governance Committee Charter
- Investment & Deposit Policy
- Procurement Policy
- Property Disposition Guidelines
- Real Property Acquisition Policy
- Sexual Harassment Policy


- Statement of Duties & Responsibilities of the Board of Directors
- Statement of the Competencies & Personal Attributes Required by Board Members
- Travel, Conferences, Meals & Entertainment Policy
- Whistleblower Policy and Procedures

MANAGEMENT TEAM REPORT

Mr. Cappellino presented 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 12:57 p.m.

Dated: March 23, 2022



Gerald Manhard, Assistant Secretary