

**MINUTES OF A MEETING OF THE
POLICY COMMITTEE OF THE
ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

- MEETING:** January 7, 2016, at Erie County Industrial Development Agency, 95 Perry Street, 5th Floor Conference Room, Buffalo, New York
- PRESENT:** James J. Allen, Hon. Mary Cooke, Richard Lipsitz, Jr., Brenda W. McDuffie, Frank B. Mesiah, Hon. Glenn R. Nellis, Hon. Edward A. Rath, David J. State and Maria Whyte
- ABSENT:** Hon. Byron W. Brown, Chris T. Johnston, John J. Mudie and Laura Smith
- OTHERS PRESENT:** Steve Weathers, Chief Executive Office; John Cappellino, Executive Vice President; Karen M. Fiala, Assistant Treasurer; and Robert G. Murray, Secretary
- GUESTS:** Don Cummings of Alt Store LLC; John Hannon on behalf of Triad Recycling; Dan Leonard of Buffalo Niagara Partnership

At 8:31 a.m., a quorum being present, Mr. Lipsitz called the meeting to order.

MINUTES

The minutes of the December 3, 2015 Policy Committee meeting were presented. Upon motion made by Mr. Rath and seconded by Ms. McDuffie the aforementioned Policy Committee meeting minutes were unanimously approved.

PROJECT MATRIX

Mr. Lipsitz reviewed the Agency's project matrix. There being no comments, Mr. Lipsitz directed that the report be received and filed.

PROJECT PRESENTATIONS

Alt Store, LLC (the "Company"), 1959 Elmwood Avenue, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax exemption benefits only project involving the renovation of an existing 30,000 sq. ft. facility and construction of a 10,000 sq. ft. addition as well as the purchase of certain items of machinery and equipment to establish a warehouse type facility servicing small and medium sized food service operators.

Mr. Cappellino stated that in exchange for providing the sales tax exemption benefits, the approval of this project will be conditioned upon adherence to certain material terms and conditions with respect to potential recapture of financial assistance as follows:

Draft Recapture Material Terms

Condition	Term	Recapture Provision
Total Investment	At project completion	Investment amount equal to or greater than 85% of project amount. Total Project Amount = \$6,900,000 85% = \$5,865,000
Employment	Same as PILOT term	Create 85% projected: Projected: FT = 19 PT = 27 Total = 32 FTE 85% = 27 FTE
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	See Recapture Period	Adherence to pay equity policy
Recapture Period	2 Years after Project Completion	Recapture of state and local sales taxes

Mr. Cappellino confirmed that the applicant will be a tenant in the facility and is not the owner of the facility. Ms. McDuffie queried as to why the Company chose to locate in the Buffalo area. Mr. Cummings responded that the Company has researched the area and found Buffalo to be a prime market for small to midsize restaurant customers and also found this area attractive because it is similar in size and scope to its other operations located in Michigan, Ohio and Pennsylvania.

Mr. Rath welcomed the Company to the community and queried as to the job categories. Mr. Cummings responded that jobs to be created will run from management to warehouse to sales to marketing positions.

Ms. Whyte welcomed the Company to the community and asked the Company what would happen if IDA financial assistance was not available. Mr. Cummings responded that the Company has researched locating in other areas, including Atlanta, Georgia and Charlotte, North Carolina, and noted that those areas are closer to its headquarter facilities such that transportation costs could be reduced if they chose to locate in those areas as opposed to Buffalo and in an effort to make up the transportation costs difference the financial assistance provided by the IDA is critical. Ms. Whyte thanked the Company for their response and confirmed that the Policy Committee needs to determine if a Company would undertake a project even without IDA financial assistance and as such, the Committee needs to understand how the incentives make a difference to ensure good use of taxpayers' dollars. Ms. Whyte then queried as to how the Company would go about hiring its local workforce. Mr. Cummings responded that the Company will work with the local workforce and investment board and other local agencies.

There being no further discussion, Mr. Allen moved and Ms. McDuffie seconded to approve of the project. Mr. Lipsitz called for the vote and the project was then unanimously approved.

3755 River Road LLC (the “Company”), 3701 River Road, Tonawanda, New York. Mr. Cappellino reviewed this proposed sales tax exemption benefits, mortgage recording tax exemption benefits and 7-year real property tax abatement benefits project involving the repair and renovation of two existing buildings and the construction of a new 4,000 sq. ft. processing center as well as related equipment and infrastructure improvements to support the Company’s recycling and zero land fill efforts.

Mr. Cappellino stated that in exchange for providing the sales tax exemption benefits, the mortgage recording tax exemption benefits and the 7-year real property tax abatement benefits, the approval of this project will be conditioned upon adherence to certain material terms and conditions with respect to potential recapture of financial assistance as follows:

Draft Recapture Material Terms

Condition	Term	Recapture Provision
Total Investment	At project completion	Investment amount equal to or greater than 85% of project amount. Total Project Amount = \$2,993,000 85% = \$2,544,050
Employment	Coincides with 7-Year PILOT term	Create 85% of project jobs = 3 85% of projected jobs = 2 Recapture Employment = 2
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Coincides with 7-Year PILOT term	Adherence to pay equity policy
Recapture Period	Coincides with 7-Year PILOT term	Recapture of state and local sales taxes, mortgage tax and real property taxes

Ms. Whyte queried as to what would happen if Agency financial assistance was not provided to the Company. Mr. Hannon, a representative of the Company, responded that the Company’s goal with respect to this project is to keep construction materials that are otherwise not incorporated into a finished product or that result from demolition efforts out of landfills. Mr. Hannon responded that these efforts produce low margins and to make it work the financial incentives allow the Company to make up this difference. Ms. Whyte then queried as to whether the Company sees any additional hires beyond the 3 new jobs as currently proposed. Mr. Hannon responded that the Company focuses on new recycling streams and since 2011, it has increased its number of employees from 1 to 15.

There being no further discussion, Ms. McDuffie moved and Mr. Mesiah seconded to approve of the project.

Ms. Whyte then stated the importance of noting that the benefits being provided to the Company should not be determined based on simply dividing the approximately \$140,000 in financial assistance by the number of jobs, but rather, consideration should be given to the fact that the jobs will be retained over a 7 year PILOT benefit period such that the consideration should also take into account that the project involves incentives of approximately \$140,000 and

3 new jobs to be created and maintained each year for a 7-year benefit period. Mr. Lipsitz and Mr. Cappellino both confirmed that Ms. Whyte is correct in her conclusion and consideration must be given to the fact that jobs are being pledged and salaries being paid over a certain time and incentives should not be calculated just based on a 1 year time period.

There being no further discussion, Mr. Lipsitz called for the vote and the project was then unanimously approved.

INFORMATIONAL ITEMS

Tenant Approval for 50 Cobham LLC (“Company”), NeuroproteXeon, and Krog Development, 50 Cobham Drive, Orchard Park, New York. Ms. Fiala noted that, as an information item only for the Policy Committee, the Agency is currently in leasehold and providing PILOT incentives to a certain project located at 50 Cobham Drive in Orchard Park. As a requirement under the Lease/Leaseback Agreement by and between the Company and the Agency, the Agency must consent to any proposed subleasing of the Company’s space to new tenants. The Company has provided the Agency with information related to its proposed leasing of space to NeuroproteXeon and asked the Agency to provide its consent to lease such space. This approval will be contingent upon the ECIDA Board consenting to leasing such space. There being no further questions, Mr. Lipsitz asked that the report be received and filed.

New State Legislation-IDA Reform Bill. Mr. Cappellino reviewed new legislation signed by Governor Cuomo on December 18, 2015, and effective on June 15, 2016, that requires and establishes common standards for IDAs in regard to applications and financial assistance agreements, and requires IDAs to develop clawback/suspension policies, project selection criteria, and further requires applicants to certify and document jobs that are created and/or retained. Mr. Cappellino then reviewed some of the specifics, and noted that both Mr. Murray and Mr. Cappellino are working on various committees, established by the New York State Economic Development Council, to create template and best practice applications, agreements, and recommendations with respect to implementing these new IDA requirements.

Sales Tax Monitoring Update. Ms. Fiala provided Committee members with an update regarding IDA requirements to, and staff efforts related to, tracking the amount of sales tax exemption benefits provided to and claimed by companies. Ms. Fiala reviewed the staff’s auditing and analysis practices to match up the amount of incentives claimed with the amount of incentives authorized. Ms. Fiala noted that last year IDA staff found 4 companies to have discrepancies between the amount of incentives claimed in comparison to the amount of incentives authorized. Two of these companies were found to have filled-out their reporting forms incorrectly such that there was no overage. Two of the companies, it was determined, had overages of approximately \$27 and \$3,400, respectively, and have already submitted payment of the overage to the ECIDA in compliance with New York State law. The ECIDA will be forwarding the payment, as required by law, to New York State.

Ms. Fiala also informed Committee members that Ms. Boudreau oversees the sales tax compliance process and on a quarterly basis holds information sessions with companies that are utilizing the Agency’s sales tax exemption benefit and reminds companies of the various sales tax procedures and to also not utilize the sales tax exemption benefit beyond the amount so authorized.

2016 WORK PLAN DISCUSSION

Mr. Lipsitz reviewed the various items listed in the Policy Committee agenda and noted that Agency staff has received correspondence from County Executive Poloncarz, the Buffalo Niagara Partnership, and David Mingoia on behalf of the Amherst IDA proposing various Policy Committee agenda items. Mr. Lipsitz then proposed that the Policy Committee discuss how to prioritize the various agenda items.

Mr. Allen suggested that the Policy Committee wait to prioritize such agenda items until after the upcoming New York State Economic Development Council (“NYSEDC”) meeting, to be held in late January, particularly in regard to the new IDA Reform Bill as previously discussed at this meeting as it will be a topic of discussion at the NYSEDC meeting.

Ms. Whyte thanked Mr. Lipsitz for his leadership and suggested that Policy Committee agenda items be linked to local and regional economic development plans.

Mr. Leonard then spoke on behalf of Laura Smith, for the Buffalo Niagara Partnership, and reviewed the Buffalo Niagara Partnership proposal that specific Policy Committee agenda items be tabled for now so the Agency can review the One Region Forward Plan first in an effort to confirm that ECIDA Policy Committee agenda items be tailored to match the regional plans.

Mr. State thanked Mr. Lipsitz for including the mortgage recording tax exemption issue on the list of potential Policy Committee agenda items and confirmed that this issue recognizes a broader issue of the role of public transit and economic development and how the IDA can assist overall in public transportation efforts.

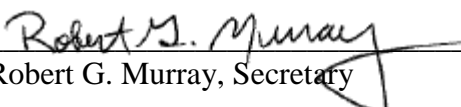
Mr. Allen suggested that the Agency consider reviewing the policies that are already in place including the County-wide Uniform Tax Exemption Policy and consider this policy, and other best practices that have already been approved by the IDA are current with the regional plan.

Ms. McDuffie then stated that the best way to proceed is to confirm that the IDA policies and priorities match existing regional economic development policies and priorities. Mr. Lipsitz then suggested that the Policy Committee continue to discuss these issues at the next Policy Committee meeting.

At this point in time, Mr. Lipsitz noted that this would be the last meeting attended by Ms. Cooke, as she will be resigning from the Policy Committee after today’s meeting and thanked Ms. Cooke for her service.

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

Dated: January 7, 2016


Robert G. Murray, Secretary