

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

- MEETING:** May 5, 2016, at Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor Conference Room, Buffalo, New York
- PRESENT:** Richard Lipsitz, Jr., Brenda W. McDuffie, Frank B. Mesiah, Hon. Glenn R. Nellis, Laura Smith, David J. State, Paul V. Vukelic and Maria Whyte
- ABSENT:** Hon. Byron W. Brown, John J. Mudie, Hon. Edward A. Rath, and Hon. Geoff Szymanski
- OTHERS PRESENT:** Steve Weathers, Chief Executive Office; John Cappellino, Executive Vice President; Robert G. Murray, Secretary
- GUESTS:** Chris Johnston; Andrew Federick, Erie County Senior Economic Development Specialist; Mr. Eric Recoon, Trahwen-G, LLC; and John Kicinski, Esq., Trahwen-G, LLC

At 8:40 a.m., in the absence of a quorum, Mr. Lipsitz called the meeting to order.

**PROJECT MATRIX**

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

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER LEGISLATION IMPLEMENTATION**

Mr. Cappellino discussed changes that will need to be made to the Agency's standard form of application to come into compliance with new requirements for applications for financial assistance. In addition, Mr. Cappellino noted that the Agency will need to adopt a labor market area for purposes of identifying the area from which new employees reside when such employees are hired by company's receiving Agency financial assistance.

At this point in time, Ms. Whyte joined the meeting. Mr. Lipsitz then confirmed that a quorum is now present and at 8:45 a.m. officially called the meeting to order.

Mr. Murray then reviewed the draft form of the ECIDA application that included all changes as required by the IDA legislation and more specifically discussed the labor market area

requirement and the new question on the application asking an applicant if there is a likelihood that the project would not be undertaken but for the financial assistance provided by the Agency.

With respect to the labor market area, Mr. Cappellino noted that Agency staff is recommending that the labor market area include the same counties as those contained within the local labor area construction policy which consists of Erie County, Niagara County, Chautauqua County, Cattaraugus County, Alleghany County, Wyoming County, Genesee County, and Orleans County. Mr. Lipsitz then asked for a motion for the Policy Committee to include the aforementioned counties, consistent with the Erie County IDA’s local labor policy, as the labor market area for purposes of the ECIDA application for financial assistance. Mr. Vukelic moved and Mr. Mesiah seconded to accept the aforementioned counties to represent the labor market area for purposes of the IDA’s application for financial assistance. Mr. Lipsitz asked for the vote and the motion was approved unanimously.

**MINUTES**

The minutes of the April 7, 2016 Policy Committee meeting were presented. Upon motion made by Mr. Mesiah and seconded by Ms. Whyte, the aforementioned Policy Committee meeting minutes were unanimously approved.

**PROJECT PRESENTATIONS**

Trahwen-G, LLC (Benderson), 135 Buell Avenue, Cheektowaga, New York. Mr. Cappellino reviewed this proposed sales tax and real property tax abatement benefits project involving the construction of a 100,000 sq. ft. spec facility to create first class office warehouse and distribution space suited for start-up and expansion minded business.

Mr. Cappellino stated that in exchange for providing the sales tax exemption and 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 = \$5,380,000 85% = \$4,573,000
Employment	Construction Phase and PILOT Term	New Tenant Employment at full Capacity = 35 New jobs 85% = 30
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	See Recapture Period	Adherence to policy

Unpaid Tax	See Recapture Period	Adherence to policy
Recapture Period	Coincides with 7 year PILOT term	Recapture of state and local sales taxes and real property taxes

Mr. Cappellino confirmed that the spec space will be required to be used as commercial space particularly because the zoning code prohibits retail space and retail use within this particular area of the Town of Cheektowaga. Mr. Cappellino then introduced Mr. Eric Recoon and John Kicinski, on behalf of the applicant. Mr. Recoon and Mr. Kicinski provided a PowerPoint presentation to the members in regard to their proposed project and the need for spec warehousing and distribution space.

Ms. Whyte thanked Mr. Recoon for his presentation, expressed her understanding of the need for spec space in Erie County and questioned why financial assistance is necessary given the high demand for such space. Mr. Recoon responded that the project is extremely risky in that there are no tenants identified, as of this point in time, and that the company is outlaying a large amount of money based on faith that tenants will eventually be found.

Ms. Whyte asked if it was fair to say taxpayers were helping to alleviate the risks.

Mr. Recoon stated that it would be fair to say that however, Mr. Recoon also stated the project will have community benefits by paying new taxes that will be generated due to the new construction on raw land that is paying but a fraction of what will be paid in taxes once the project is completed.

Ms. Whyte asked if the company could provide an update on prior ECIDA induced spec projects that have been constructed by Benderson. Mr. Recoon stated that the company has received ECIDA financial assistance to construct two facilities in Cheektowaga and stated that one of the two projects is currently in construction.

Ms. McDuffie thanked Mr. Recoon for his presentation and expressed her support for the project and asked Mr. Recoon if he could answer if, but for the financial assistance to be provided by the Agency, the project would be undertaken. Mr. Recoon stated that the company would not undertake a spec building project without the Agency's financial assistance.

Ms. Smith reminded Policy Committee members of a recent CBRE report showing how it is unhealthy for a community to not have readily available spec space and also reminded Policy Committee members that the spec space to be constructed hits on two regional priorities including manufacturing and logistics.

Mr. Lipsitz then asked for a motion to approve of the project. Ms. McDuffie moved to approve the project.

Mr. Vukelic queried as to the vacancy rate for this type of space. Mr. Recoon stated that a vacancy rate of 5-12% is considered a healthy level, while anything over 12% would indicate

that there is too much supply. When vacancy rates are too low, businesses will simply by-pass the community.

Mr. Vukelic then seconded the motion to approve of the project. Mr. Lipsitz then called for the vote and 7 Policy Committee members voted in favor of the motion, no members voted against the motion, and Mr. Lipsitz abstained because he has a relationship with some of the family members of the applicant. Mr. Lipsitz stated then that the Policy Committee will report to the Board that it approved of the project by a vote of 7 in favor, zero against and one abstention, while noting that the required number of votes, being 8, was not obtained.

## **COMPLIANCE ISSUE-DERRICK CORPORATION**

Mr. Cappellino reviewed the status of the Derrick Corporation employment situation particularly its reduction in existing full time jobs that Derrick Corporation was otherwise required to maintain. Mr. Cappellino reminded members that the company was very upfront with its employment situation and had reached out to the Agency as early as October of 2015 in a proactive manner to inform the Agency of a world-wide decrease in demand for its oil and gas industry products and the likelihood of layoffs.

Mr. Cappellino noted that the Agency is implementing its recapture policy and confirmed that the recapture policy gives, in this situation, a lot of discretion to the Board in determining if there should be a recapture event.

Mr. Cappellino then reviewed five options, as developed by Agency staff, for consideration:

1. Recover all benefits if company fails to meet a material term as required under the company's inducement resolution.
2. Recover sales tax, PILOT and mortgage benefits on a straight percentage based on the percentage of non-compliance in any given year.
3. Implement a recapture penalty equal to the difference between the PILOT and the full value taxes for each year of non-compliance over the term of the PILOT and take a pro rata recapture on sales and mortgage tax.
4. Implement a pro rata recapture for PILOT, sales tax and mortgage benefit based on the annual PILOT savings, and prorating sales and mortgage tax benefits for each PILOT year based on the percentage of non-compliance.
5. Company would be placed on the "watch list" (which would require more regular monitoring) and given a specific deadline to get back into compliance.

Mr. Johnston recalled the spirit of the recapture policy is to implement a recapture event based on bad actors and has safeguards to handle companies that are adversely affected by downward market trends or downward economic conditions beyond the control of the company. Mr. Johnston noted that the company will be unable to recover quickly because the turndown is a global turndown and recovery will not be able to undertaken by the company in a quick manner. As such, it would be difficult to put a timeframe, per se, on recovery and suggested that the

Agency monitor the company over a six month time period, and then at that point in time, reconsider.

Mr. Vukelic noted that the company is 33% below its employment requirement, but also noted that the company is making a 66% benefit and stated that some consideration should be given to this fact.

Ms. Smith commented that the financial assistance benefit period covers a 7 year and 10 year period, respectfully, for each PILOT Agreement and is not just limited to the construction time period and expressed her desire to place the company on the “watch list”, like has been done with other companies, and then review at the appropriate time thereafter, a recapture event as described in the fifth recapture option because of, Ms. Smith expressed, her belief that the Agency has a fiduciary duty to consider recapture.

Mr. Lipsitz stated he has great respect for the company and that it came forward proactively to discuss its employment issues with the Agency, stated this is a company that has done a lot of good for the county for decades, but then stated the company is getting a public subsidy, the subsidy comes with a risk, and he concluded by stating it’s part of the job of Agency board members to not to just abate taxes, but to also consider recapture of abatements as required by law.

General discussion ensued regarding the various options.

Ms. McDuffie commented that, in relation to sales tax and other benefits, the committee should take into consideration that the buildings have already been built and that construction wages have already been paid, such that there has been some benefit to the community already because the building investment has been made.

Ms. Whyte stated that the committee must recognize that global forces are adversely affecting a local company but must also consider the ECIDA’s commitment and duty to local taxpayers. Ms. Whyte expressed her belief that a recapture option combining option #3 and #5 should be created because the taxpayer needs to know when the ECIDA will pull the trigger on recapture if there is no employment recovery and suggested that some partial recovery would make sense in this instance.

Mr. Lipsitz suggested that staff be directed to consider and combine recapture options #3 and #5 and present the new option at the next Policy Committee meeting in June.

Mr. Johnston stressed that in Derrick Corporation’s industry, there will be a certain length of time that must elapse before global recovery is realized and then there will be a lag time thereafter for the company to gear up once again to meet market demands.

Mr. State commented that he likes option #5 because it gives the company a certain amount of time to recover and is comfortable with combining option #5 with option #3.

Mr. Lipsitz thanked the committee members for their consideration and directed staff to analyze and combine options #3 and #5 for purposes of presenting a revised option to the Policy Committee at its next meeting.

## **OSC LEGISLATION IMPLEMENTATION**

Project Type Matrix, Material Terms/Criteria. Mr. Cappellino reviewed proposed material terms and evaluative criteria for various projects which the Board must take into consideration as required by the new IDA reform legislation.

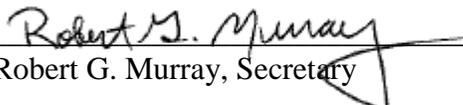
Ms. Smith asked if MWBE utilization could be added for construction and contracting services. Mr. Mesiah expressed his agreement with Ms. Smith's concerns and reiterated his concern that no consideration is being given to MWBE issues in general.

Ms. McDuffie moved that the Policy Committee approve of the uniform criteria for the evaluation and selection for each category of projects for which financial assistance will be considered with the addition of the inclusion of MWBE utilization for construction and contracting services and with the understanding that this document will be revised over time. Mr. Nellis seconded the motion. Mr. Lipsitz called for the vote and the uniform criteria were then unanimously approved.

Mr. Cappellino then briefly reviewed the material terms compliance report describing the efforts the ECIDA makes to determine whether a client complies with the required material terms and conditions.

Mr. Lipsitz stated that the Policy Committee will postpone its review of work plan action items and asked for a motion to adjourn the meeting. Ms. McDuffie moved and Ms. Smith seconded to adjourn the meeting. The motion was unanimously approved and the meeting was adjourned at 10:20 a.m.

Dated: May 5, 2016

  
Robert G. Murray, Secretary