

***FOR INFORMATIONAL PURPOSES ONLY – NO QUORUM PRESENT***

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

- MEETING:** June 2, 2016, at Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor Conference Room, Buffalo, New York
- PRESENT:** Richard Lipsitz, Jr., Glenn R. Nellis, Hon. Edward A. Rath, Laura Smith, David J. State, and Maria Whyte
- ABSENT:** Hon. Byron W. Brown, Brenda W. McDuffie, Frank B. Mesiah, John J. Mudie, Hon. Geoff Szymanski and Paul V. Vukelic
- OTHERS PRESENT:** John Cappellino, Executive Vice President; Karen M. Fiala, Assistant Treasurer; Robert G. Murray, Secretary
- GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist; Rebecca Gandour, City of Buffalo Office of Strategic Planning; Jesse Kohler on behalf of Kohler Awning and David Lavin on behalf of Great Lakes Orthodontics

In the absence of a quorum at 8:37 a.m., 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.

**PROJECT PRESENTATIONS**

Kohler Awning, 2600 Walden Avenue, Cheektowaga, New York. Mr. Cappellino reviewed this proposed sales tax, mortgage recording tax and real property tax abatement benefits project involving the proposed construction of a 12,000 sq. ft. expansion to an existing manufacturing facility, such new space to provide for additional manufacturing capacity and expanded material storage space.

Mr. Cappellino stated that in exchange for providing the sales tax exemption, mortgage recording 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:

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**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 = \$850,000 85% of total project amount = \$722,500
Employment	Coincides with 7-Year PILOT term	Maintain base 50 Create 85% of projected: Projected Jobs: 1 85% of projected jobs = 1 Recapture Employment: 51
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Coincides with 7-Year PILOT term	Adherence to policy
Unpaid Tax	Coincides with 7-Year PILOT term	Adherence to policy
Recapture Period	Coincides with 7-Year PILOT term	Real Property Taxes, State and Local Taxes, Mortgage Tax

Ms. Whyte queried as to why the financial assistance is necessary in order to allow the project to move forward. Mr. Kohler responded on behalf of Kohler Awning and stated that the company has a long term business plan requiring it to respond to competition and it must do so by expanding to allow it to keep and hire new employees and ECIDA financial assistance will help the company in its expansion efforts.

Mr. Lipsitz queried as to what Kohler Awning employees do. Mr. Kohler responded that Kohler Awning employees are engaged in manufacturing, sales, design, installation, and welding efforts. Mr. Lipsitz then queried as to what the one new full time position will entail. Mr. Kohler responded that this will be a full time installer position.

Mr. Lipsitz then noted that there is not a quorum present such that no official action can be taken today. Mr. Lipsitz then asked for a show of hands of all those in favor of the project. All Policy Committee members then raised their hands and Mr. Lipsitz noted that when this project is presented to the full Board, it will be noted that no opposition was raised by the Policy Committee to this project.

Great Lakes Orthodontics, Ltd., 200 Cooper Avenue, Tonawanda, New York. Mr. Cappellino reviewed this proposed sales tax and real property tax abatement benefits project involving the expansion and renovation of the existing facilities to allow for a 25,000 sq. ft. expansion for manufacturing, warehousing and office space purposes.

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

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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 = \$5,005,230 85% of total project amount = \$4,254,446
Employment	Coincides with 10-Year PILOT term	Maintain base 221 Create 85% of projected: Projected Jobs: 9 85% of projected jobs = 8 Recapture Employment: 229
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Coincides with 10-Year PILOT term	Adherence to policy
Unpaid Taxes	Coincides with 10-Year PILOT term	Adherence to policy
Recapture Period	Coincides with 10-Year PILOT term	Real Property Taxes, State and Local Taxes

Mr. Cappellino introduced David Lavin, who spoke on behalf of Great Lakes Orthodontics, who stated the company faces strong competition and further stated that if the project cannot move forward, the company will look elsewhere to expand.

Ms. Whyte queried as to the competitive advantage that the company may have by undertaking its operations in the United States. Mr. Lavin stated the company has the ability, by being located in New York, to respond quickly to its east coast customers.

Mr. Lipsitz queried as to what the new jobs will be. Mr. Lavin responded that the new jobs will include technician and sales positions.

Ms. Smith expressed support for the project and commented that this is a health and life sciences sector investment that our region desires to encourage.

Mr. Lipsitz then commented that there is not a quorum present by which to undertake any official action with respect to this project but did ask all members present to show their hands if they support the project. All Policy Committee members present expressed support for the project.

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**COMPLIANCE ISSUES**

API Heat Transfer Project. At this point in time, Mr. Lipsitz stated that there is no quorum present, such that no action can be taken on the recapture issue presented to the Committee today. Mr. Lipsitz also noted that there are not enough members present to enter into Executive Session and stated that he will remove this item from the agenda as he does not wish to discuss this item in Executive Session given that there is not a quorum present to even enter into Executive Session or take any action related thereto.

Derrick Corporation. Mr. Cappellino provided general background to Policy Committee members regarding the Derrick Corporation recapture/employment shortfall issue. Mr. Cappellino then reviewed the three options that the Policy Committee had asked Agency staff to prepare, for consideration regarding potential recapture of sales tax, mortgage tax and real property tax abatement benefits.

Ms. Whyte commented that this is now the second case before the Agency regarding the decrease in base line employment numbers and the potential recapture of financial assistance. Ms. Whyte noted that with respect to the Derrick Corporation, this loss in employment is a result of a global decrease in demand for Derrick Corporation's products and further commented that it will take time for global demand to increase and allow Derrick Corporation to recover its employment base. Ms. Whyte then expressed that she is in favor of implementing the first option with at least a two year watch list time period but also expressed a concern that she does not want this Derrick Corporation solution to become the new solution for any and all future employment shortfall and recapture issues that may come before the Agency in the future.

Ms. Smith then expressed her opinion in favor of option #2 particularly because the company still retains a significant number of employees, the company built the project as proposed, the company utilized local labor which it was required to do so, and as such expressed her opinion in favor of only a pro rata recapture of the PILOT benefit but no recapture of sales tax or a full recapture of actual PILOT benefits because the company has made the investment as promised and used local labor in doing so.

Mr. Rath stated his opinion in favor of option #2 but also stated that economic conditions indicate an improvement in energy markets such that a two year monitoring period may provide enough time for Derrick Corporation to recover. However, Mr. Rath suggested that the company provide six month updates on its employment numbers during this two year monitoring period.

Mr. State expressed a concern with Ms. Smith's opinion because he felt the Agency may be over complicating the recapture process but did state he agrees philosophically with Ms. Smith's approach.

Mr. Nellis expressed his support for a two year watch list time period with a repeating six month job reporting requirement.

Mr. Lipsitz expressed his support for the first option.

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Ms. Whyte then asked Ms. Smith to confirm if she is stating her preference that no action be taken with respect to sales tax and mortgage recording tax, with respect to option #2, for the “after watch list non-compliance” time period. Ms. Smith and Mr. Rath confirmed the same.

Ms. Whyte stated that she disagrees with Ms. Smith and Mr. Rath because she believes the Agency has a fiduciary duty to Erie County taxpayers to implement the recapture policy and advocated for option #1 as originally proposed.

Ms. Smith then asked if, at the end of the two year watch list time period, the Agency would be able to have additional discussion and perhaps consider other options for recapture thereafter. Mr. Lipsitz responded in the affirmative.

Mr. Cappellino then attempted to summarize the discussion and asked if a new option #4 should be established allowing for a pro rata PILOT benefit recapture, and no action taken with respect to sales tax and mortgage recording tax benefits during the watch list time period, and thereafter, after the watch list time period expires and a non-compliance issue continues, that there then would be continued pro rata recapture of PILOT benefits thereafter but no recapture action would occur thereafter with respect to sales tax and mortgage tax exemption benefits.

Mr. Lipsitz asked staff to prepare a new option table as discussed today and present the options to the full Board at the next meeting.

**WORK PLAN ITEMS DISCUSSION**

Ms. Whyte updated Policy Committee members that she and Ms. Smith had met with Mr. Cappellino to discuss the various work plans as proposed and emphasized her desire to establish a work plan consistent with regional planning considerations and suggested that experts be brought in, perhaps from other areas of the country, to help educate members on various regional planning considerations. General discussion ensued.

There being no further business to discuss, Mr. Lipsitz adjourned the meeting at 9:40 a.m.