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

MEETING:	November 3, 2016, at Erie County Industrial Development Agency, 95 Perry Street, 5th Floor Conference Room, Buffalo, New York
PRESENT:	Hon. Johanna Coleman, Colleen DiPirro, Richard Lipsitz, Jr., Brenda W. McDuffie, Frank B. Mesiah, Hon. Edward A. Rath, III, Laura Smith, David J. State, and Maria Whyte
ABSENT:	Hon. Byron W. Brown, John J. Mudie, Hon. Glenn R. Nellis, Hon. Geoff Szymanski and Paul V. Vukelic
OTHERS PRESENT:	Steve Weathers, President and CEO; 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; Amy Judd on behalf of The Alexandrea Apartments, LLC; Patrick Curtin, Human Resources Manager, on behalf of Niagara Blower; Mr. John Anderson, CEO, on behalf of Seneca Mortgage

There being a quorum present at 8:45 a.m., Mr. Lipsitz called the meeting to order.

MINUTES

The minutes of the August 4, 2016 Policy Committee meeting were presented. Upon motion made by Mr. Rath, and seconded by Mr. Mesiah, the aforementioned Policy Committee meeting minutes were unanimously approved.

PROJECT MATRIX

Mr. Cappellino reviewed the Agency's project matrix. Mr. Cappellino stated that on a year-to-date basis, 11 projects have been approved which is low compared to prior years. General discussion ensued. Mr. Lipsitz directed that the report be received and filed.

PROJECT PRESENTATIONS

The Alexandre Apartments, LLC, 510 Washington Street, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax and mortgage recording tax exemption benefits project noting that the project will rely on the City of Buffalo 485-a real property tax abatement.

This project involves the adaptive reuse of the former Loew's Theater Warehouse in the City of Buffalo. This building has been vacant for 19 years and is approximately 24,000 sq. ft. and will be rehabilitated to include a residential and commercial component consisting of 12 market rate units and approximately 1,300 sq. ft. of commercial/retail space.

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

Draft Recapture Material Terms

Condition	Term	Recapture Provision
Total Investment Reviewwith company	At project completion	Investment amount equal to or greater than 85% of project amount. Total Project Amount = $4,269,606 85% of total project amount = $3,629,165
Employment	Coincides with recapture period	New job creation of – 5 Recapture Employment - 4
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Coincides with recapture period	Adherence to policy
Unpaid Tax	Coincides with recapture period	Adherence to policy
Recapture Period	2 years after project completion	State and local taxes, mortgage tax

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

Mr. Cappellino introduced Ms. Amy Judd, on behalf of the project's developer, who provided a presentation of the project.

Ms. Whyte queried as to whether the project would go forward if the Agency does not provide financial assistance. Ms. Judd stated that that would pose a real problem to the project and stated bank underwriting would be adversely affected if Agency incentives were not to be provided.

Mr. Mesiah inquired about parking. Ms. Judd responded that each unit has a secured spot at the Mohawk Ramp. Mr. Mesiah then inquired about lead and drinking water concerns. Ms. Judd stated that the project has brand new water infrastructure components.

Ms. McDuffie congratulated the company on figuring out how to redevelop and finance the development of this building. She then questioned as to whether the proposed new bakery tenant is an established or new business. Ms. Judd responded that the bakery is a brand new business.

Mr. Rath also congratulated the company on their project and asked about the target tenants for the residential space. Ms. Judd responded that the company anticipates finding tenants who are working within the Buffalo Niagara Medical Campus as well as from IBM and Delaware North plus people in general who do not need or want a car and desire to live in an urban area.

Ms. McDuffie made a motion to send this project to the Agency's Board of Directors with a recommendation for approval. Mr. Rath seconded the motion. Ms. McDuffie called for the vote and the project was unanimously approved.

COMPLIANCE ISSUES

Niagara Blower. Mr. Cappellino provided members with background on the Niagara Blower incentive approval in 2013 which involved the approximate $1,000,000 renovation of the company's newly purchased facility on Sawyer Avenue in Tonawanda, New York. The project consisted of building renovations and the purchase of new equipment and building improvements associated with the new facility. The project was approved for sales tax incentives and the recapture terms included the standard investment and employment conditions. The employment requirement was for maintaining 110 jobs and adding 17 new positions within two years after project completion. Mr. Cappellino noted that the 2013 project sales tax incentive approval amount was $61,250, and the project sales tax incentives actually used by the company were $42,068.89.

The company has experienced layoffs and as of December 31, 2013, the company reported 94 FTE positions.

In May of 2014, the Policy Committee reviewed the employment condition and voted to have staff monitor the employment level for the following six months or for a lesser amount of time if the employment levels came back into compliance. Agency staff monitored the employment level and Mr. Cappellino noted the company came back into compliance in September 2014 with 110 FTE positions.

The company's August 2016 quarterly employment survey report indicated 79 FTE positions. This number is non-compliant for both the job retention goal of 110 FTE positions and the job creation goal of 17 new FTE positions for a grand total of 127 FTE positions.

Mr. Curtin, Human Resources Manager of the company, then addressed Policy Committee members by providing a brief history of the company and described the company's liquid cooling/vapor condensing work and products used primarily in the oil and gas and power energy sectors. Mr. Curtin stated that the company's customers are primarily from the oil/gas and fracking sector and with the decline of market conditions in that industry, the company has experienced a decrease in employment levels.

As of November 1, 2016, Mr. Curtin stated the company has 80 FTE positions consisting of 24 shop employees and 56 office employees. The company experienced layoffs in 2014 with a decline in oil prices worldwide and related thereto the company's clients do not need to be purchasing the company's products when there is a worldwide drop off in oil prices and production.

Mr. Curtin stated that the company has taken several steps to increase its business including diversification into new markets and more reliance upon its parent company's global network to expand clients and find new clients. It is also waiting for the world market to turn around so large orders can return.

Mr. Mesiah questioned how further declines in the market area may affect the company. Mr. Curtin responded the company is trying to diversify its product offerings so it is not so dependent on a single sector.

Ms. Whyte queried as to whether expansion into new markets will bring about new employment. Mr. Curtin responded that the company will make new hires if it obtains new business in new market areas and should be able to resume hiring and meet its employment numbers.

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

Ms. McDuffie queried as to when the company expects to increase its employment numbers. Mr. Curtin responded that they do not see any increase of employment in 2017 but only look to stabilize the number as it exists now, so within two years from now, we believe by the end of 2018, that business will pick up.

Ms. DiPirro asked if the business is stable now or is business cyclical so that FTE positions can go up and down. Mr. Curtin responded that the company's employment numbers are currently stable and that the company is building diversity and hopes to level out its employment numbers in the near future to avoid ups and downs.

Ms. McDuffie asked that if the Agency decided to fully recoup the $42,000 in sales tax exemption benefits, then how would Niagara Blower and its parent company react. Mr. Curtin stated it is difficult to see how the parent company would react but stated the parent company is committed to Niagara Blower and suggested that if the Agency could pro rate the recapture of the sales tax benefit, then it would be greatly appreciated.

Ms. Smith stated that the Agency shouldn't underestimate the approximately $3.5 million investment that the company has made in our community and noted the Agency has a precedent of putting companies on a watch period and not immediately recapturing financial assistance such that if we deviate from this precedent, it will difficult to explain to the company.

Ms. Coleman asked Mr. Curtin if the company faces competition that affects its ability to expand globally. Mr. Curtin responded that the company faces local and national competition but its parent company has a global network of clients and Niagara Blower is hopeful it can tap into that global network of clients.

Mr. State thanked the Chairs and Agency staff for the process and thought that has gone into this discussion and also thanked the company for its presentation. Mr. State stated that he struggles with these decisions and doesn't want to be seen as kicking a company when it's down, however, at the same time, it's necessary to balance the public benefit of job creation that was the bargain made by Erie County taxpayers.

Ms. McDuffie thanked the Policy Committee for their thoughtful discussion and thanked the company for its presentation.

<u>Seneca Mortgage.</u> Mr. Cappellino provided background to Policy Committee members on the AMS Servicing, LLC/Seneca Mortgage project. The Agency Board in 2014 approved sales tax benefits only for the Seneca Mortgage project. To date, the company has utilized the entire sales tax incentive amount of $219,000. Mr. Cappellino stated the Agency approved the incentive in connection with the company's relocation and build-out of new larger space at the Jamison Road location in Elma, New York. The company made an approximate $2,500,000 investment consisting of the renovation and purchase of new equipment related to the build-out of the facility. The project recapture terms included the standard investment and employment numbers and the employment requirement was for maintaining 270 FTE positions and adding 165 new FTE positions within two years after project completion.

Mr. Cappellino stated the Agency was made aware through media and other contacts that AMS Servicing had sold its Jamison Road operations to a third party, Nationstar Mortgage Holdings in June of 2016, and that only 5 FTE employees remain on site. Mr. Cappellino also stated that staff and legal counsel reached out to the owners of Seneca Mortgage to notify them that the terms of their ECIDA agreement required Seneca Mortgage to retain at least 270 FTE employees on the site and to create 165 new FTE positions within two years of project completion. These conversations confirmed that the Jamison Road servicing operation was in fact sold to Nationstar, and that Seneca Mortgage had 5 employees on site as of October 31, 2016. Seneca Mortgage did, however, indicate that Nationstar had hired a number of its employees (approximately 200) and was continuing to operate the facility at the site. Seneca Mortgage representatives also confirmed that the issue of job retention and creation commitments did not come up during the sale negotiations and Nationstar did not assume those obligations.

Mr. Cappellino then introduced Mr. John Anderson, CEO of the company, who then made a brief presentation to the Policy Committee. Mr. Anderson provided background on the company's growth and expansion within Erie County and noted that during 2015, the company had grown to approximately 394 employees. Mr. Anderson stated that when interest rates fell off during 2015, the company had a difficult time buying loans to service. In 2016, the company decided it would be better to outsource to a third party, for loan servicing, and Mr. Anderson then described how Seneca Mortgage sold its loan servicing assets. To date, Mr. Anderson stated that Seneca Mortgage continues to purchase mortgages and that it outsources all work to Nationstar here locally. Mr. Anderson stated Nationstar is committed to Western New York and is asking the Agency to remember that it did not abandon the site or its employees when it sold its loan servicing business to Nationstar.

Ms. McDuffie queried as to why the company didn't disclose its ECIDA job requirements and commitments to the purchaser. Mr. Anderson stated that Seneca Mortgage did disclose the arrangement; however, the purchaser said that this was a Seneca Mortgage issue and did not assume the obligations. Ms. McDuffie then asked how many employees are currently employed at Nationstar. Mr. Anderson stated they have transitioned 230 employees from Seneca Mortgage to Nationstar and none of those employees lost pay, vacation, or health benefits.

Ms. Whyte questioned Mr. Anderson as to why he didn't notify the Agency of the sale of its business. Mr. Anderson apologized to the Agency and stated that he should have disclosed the sale and stated this was a complete oversight on his part. Mr. Whyte thanked Mr. Anderson for the apology but stated this leaves Erie County taxpayers without the job benefits which were bargained for when sales tax benefits were provided to the company. Their perception, Ms. Whyte explained, is that it appears as if taxpayers in Erie County do not matter.

Mr. Anderson again apologized for this oversight, stated he should have reached out to the Agency and concluded that there were so many moving parts in the sale of the assets that he overlooked this component. Ms. Whyte confirmed that there are 230 FTE employees employed by Nationstar and stated that even if the Agency extends or assigns the benefits to Nationstar, the company would still be about 200 or more employees below the required amount. Ms. Whyte then asked if Mr. Anderson anticipates Nationstar will be increasing its employment numbers. Mr. Anderson stated he cannot speak for Nationstar but noted they are the nation's leader in this loan servicing market sector. Mr. Anderson also stated that the building has the capacity to support 700 people.

Ms. Whyte asked Mr. Murray if the company is allowed to sell its assets. Mr. Murray responded that the company was obligated to maintain the business and employment numbers. Mr. Murray stated that the company certainly could have sought the Agency's consent to agree to the sale of its assets and the Agency, as it has done in the past, could have and mostly like would have required the new company to assume the Seneca Mortgage employment commitments.

Ms. Gandour asked Mr. Lipsitz for the options to be considered here. Mr. Cappellino responded that in theory, if the new company asks to assume the employment obligations, the Agency could entertain that request. Mr. Anderson then responded that Nationstar is not interested in assuming the employment commitments.

Mr. Lipsitz asked Mr. Anderson to describe the wages. Mr. Anderson stated that wages begin at approximately $45,000 a year plus benefits and can rise approximately to $60,000 to 80,000 a year with benefits.

Mr. State asked Mr. Anderson if during negotiations with Nationstar whether the ECIDA employment commitment issue came up. Mr. Anderson stated the contract with Nationstar required Nationstar to hire 200 Seneca Mortgage employees but also stated Nationstar was not interested in assuming the ECIDA job commitments.

Ms. Whyte then stated that if Nationstar is not interested in assuming the ECIDA employment commitments, then what exactly is Seneca Mortgage asking for? Mr. Anderson stated that he would like the Agency to consider that 200 Seneca Mortgage FTE employee positions are now retained at Nationstar, and further stated that Seneca Mortgage does understand that it has contractual liabilities but with that said, requested that consideration be given to the 200 FTE employee positions retained by a different entity.

Mr. Lipsitz stated that the Policy Committee will not be making any determinations with respect to Seneca Mortgage or Niagara Blower today. He stated he will ask Agency staff, as has been done in the past, to develop financial assistance modification, recapture and/or termination options to be presented back to this Policy Committee at its next meeting. Mr. Lipsitz thanked Niagara Blower and Seneca Mortgage for their presentations.

Ms. Whyte stated she appreciates Mr. Anderson's request but expressed her concern that the idea that Erie County taxpayers would only be an afterthought, and without communicating with the Agency at the outset, that this becomes problematic, and she stated her expectation that the County Executive will confirm this concern at the Agency's Board meeting.

INFORMATION ITEMS

Update on Sales Tax Overage Issue. Mr. Cappellino provided Policy Committee members with an update on the Zaepfel sales tax overage issue noting that the company has agreed to allow the Agency to recapture sales tax exemption benefits claimed above and beyond the amount so authorized and the company will be making six equal monthly installments to the Agency of the overage amount. The Agency will then submit those payments to the New York State Department of Taxation and Finance as required.

There being no further business to discuss, Mr. Lipsitz adjourned the meeting at 10:08 a.m.

Dated: November 3, 2016

Robert G. Murray

Robert G. Murray, Secretary

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