

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

- MEETING:** March 9, 2017, at Erie County Industrial Development Agency, 95 Perry Street, 5th Floor Conference Room, Buffalo, New York
- PRESENT:** Richard Lipsitz, Jr., Brenda W. McDuffie, John J. Mudie, Hon. Glenn R. Nellis, Laura Smith, David J. State, Paul V. Vukelic and Maria Whyte
- ABSENT:** Rev. Mark E. Blue¹, Hon. Byron W. Brown, Hon. Johanna Coleman, Colleen DiPirro and Hon. Geoff Szymanski
- OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Karen M. Fiala, Assistant Treasurer; Robert G. Murray, Secretary
- GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist; Eric Burkhard, on behalf of Moog, Inc.; Rocco Termini, on behalf of R & M Leasing, LLC; Scott Fairbrother, on behalf of 791 Washington, LLC; Brendan Mehaffy, Executive Director, Office of Strategic Planning for the City of Buffalo

There being a quorum present at 8:35 a.m., the Policy Committee meeting was called to order by its Chair, Mr. Lipsitz.

MINUTES

The minutes of the February 2, 2017 Policy Committee meeting were presented. Upon motion made by Mr. Nellis, and seconded by Mr. Mudie, the aforementioned Policy Committee meeting minutes were unanimously approved.

PROJECT MATRIX

Mr. Cappellino reviewed the Agency's project matrix. Mr. Lipsitz directed that the report be received and filed.

¹ Mr. Blue participated via telephone conference call, however, he did not count for quorum purposes and is not considered present or eligible for purposes of voting on any action items.

PROJECT PRESENTATIONS

128 Pearl Street, LLC, 128 Pearl Street, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax exemption and mortgage recording tax exemption benefits project involving the redevelopment of the existing structure at 128 Pearl Street including the construction of seven apartments and approximately 950 sq. ft. of commercial/office space. Mr. Cappellino confirmed the retail component of the project represents 9% of the project costs, so retail prohibitions are not triggered.

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	At project completion	Investment amount equal to or greater than 85% of project amount. Project Amount = \$1,840,427 85% = \$1,564,362
Employment	2 years after project completion	Create 85% of Projected Projected = 1 85% = 1
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Same as recapture period	Adherence to policy
Unpaid Tax	Same as recapture period	Adherence to policy
Recapture Period	2 years after project completion	State and Local Sales Taxes Mortgage Tax

Ms. McDuffie commented on recent Policy Committee discussion about mixed-income properties but stated that she recognizes this project will not go forward without IDA financial assistance. Ms. McDuffie also stated she will be voting in favor of the project.

Ms. Whyte thanked the developer for their efforts and commented on her understanding that the building has been proposed for an affordable housing project in the past; however, those efforts were unsuccessful.

Ms. McDuffie moved and Mr. Mudie seconded to approve of the project. Mr. Lipsitz called for the vote and the project was unanimously approved.

Moog, Inc., 400 Jamison Road, Elma, New York. Mr. Cappellino reviewed this proposed sales tax and real property tax abatement benefits project involving the construction of 95,000 sq. ft. of assembling and test facilities for its military and commercial aircraft flight products.

Mr. Cappellino stated that in exchange for providing the sales tax 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 modification, recapture and/or termination 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 = \$32,600,000 85% = \$27,710,000
Employment	Coincides with 10-Year PILOT	Maintain Base = 251 Create 85% of Projected Projected = 42 85% = 36 Recapture Employment = 287
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Coincides with 10-Year PILOT	Adherence to policy
Unpaid Tax	Coincides with 10-Year PILOT	Adherence to policy
Recapture Period	Coincides with 10-Year PILOT	Recapture of Real Property Taxes, State and Local Sales Taxes

Mr. Lipsitz queried as to the average wage of the employees. Mr. Burkhard, on behalf of the company, responded that average wages for the new jobs will be approximately \$84,000.

Ms. McDuffie thanked the company for their investment and noted that the company has a long and successful history of new investment and employment and has been an excellent contributor to the area.

Ms. McDuffie moved and Mr. Vukelic seconded to approve of the project. Mr. Lipsitz called for the vote and the project was unanimously approved.

R & M Leasing, LLC, 155 Chandler Street, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax and mortgage recording tax exemption benefits project involving the redevelopment of the existing facility into incubator business space for Start Up NY companies and to provide two residential apartment units.

Mr. Cappellino confirmed the IDA sales tax benefits will only apply to the core and shell of the building.

Mr. Cappellino stated that in exchange for providing the sales tax 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	At project completion	Investment amount equal to or greater than 85% of project amount. Total Project Amount = \$10,591,000 85% = \$9,002,350
Employment	Coincides with 7-Year PILOT	Maintain Base = 50 Create 85% of Projected = 20 85% = 17 Recapture Employment = 67
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Same as Recapture Period	Adherence to policy
Unpaid Tax	Same as Recapture Period	Adherence to policy
Recapture Period	2 Years After Project Completion	State and Local Sales Taxes Mortgage Recording Tax

Ms. Smith expressed her support for the project and commented upon the risky nature of the investment due to the fact that its proposed tenants, being new Start Up NY businesses, imposes start up and entrepreneurial risk unique to the new business tenants.

Ms. McDuffie concurred with Ms. Smith’s comments and stated that she likes how the IDA’s financial assistance can leverage the Start Up NY program for the benefit of the businesses and new jobs that will be created within the new facility.

At this point in time Mr. Termini, on behalf of the company, asked for a waiver of its job retention and job creation requirements because it is impossible for the landlord to guaranty the jobs for incubator startup businesses due to the large portion of companies in this category that fail, or end up being bought and moved out of the area. In such an event, Mr. Termini stated he would immediately look for new tenants.

Ms. McDuffie suggested that because this is new information and because the Policy Committee has not considered a waiver request in the past, it may be proper to table this matter. Ms. McDuffie also noted that the Agency has done spec projects, such as the Benderson projects, and noted that the landlord did pledge and commit to job creation in those situations at the outset.

Ms. Whyte suggested that the Policy Committee consider tabling the project because a waiver of job commitment has never been considered by the Policy Committee and Ms. Whyte expressed a concern that it could become a precedent for future projects.

Mr. Termini commented that the project is under a time constraint due to the fact that the current Start Up NY program is expiring and he needs to get project approvals prior to the anticipated Start Up NY termination date.

Ms. Smith asked if Mr. Termini is asking for a waiver or if he is asking to change the job creation and retention numbers to zero. In addition, Ms. Smith commented that spec buildings, such as the one Benderson has and is constructing, are perhaps not as risky as the incubator spec type project due to the larger base of tenants that could occupy the Benderson spec building in comparison to the unique space being put on the market by Mr. Termini.

Mr. Vukelic asked if Mr. Termini intends this space to always be incubator space. Mr. Termini responded in the affirmative. Mr. Vukelic then commented that startup companies typically have self-employed employees and the nature of start up space, such as the space provided by 43North, involves high tenant turnover.

Mr. Lipsitz stated that the question is whether the Policy Committee can waive job requirements. Mr. Lipsitz confirmed that the Policy Committee has not considered a waiver prior to this point.

Ms. Smith commented that the tenants that would occupy the Benderson spec building are different than the startup tenants that would occupy Mr. Termini's space, which would be characterized as high risk tenants. Ms. Smith then asked if the Policy Committee could send the project to the Board and let the Board make the waiver determination.

Mr. Cappellino confirmed that the Agency is under no obligation under the law that its applicants pledge to a specific job creation number such that, in Mr. Cappellino's opinion, it would be in the purview of the Committee to consider a waiver, at this point in time, and then later, perhaps the Committee would like to consider how it would handle incubator space in the future.

Mr. State asked if the project can be recommended to the Board for approval and then, if there is a job shortfall, the process would be to have the company come back before the Board to allow Mr. Termini to explain the shortfall and to allow the Board to consider such an explanation.

Mr. Cappellino responded that yes, this could be forwarded to the Board for approval and Mr. Termini, if there was a job shortfall, would be required to meet with the Board at that point in time and the Board would have discretion in analyzing and reviewing the situation.

Mr. Lipsitz asked Mr. Termini if he would be okay if the Policy Committee recommended approval with respect to the project and with respect to the number of jobs retained and number of jobs to be created as stated within the application. Mr. Termini responded in the affirmative.

Ms. McDuffie moved and Ms. Whyte seconded to approve of the project as proposed. Mr. Lipsitz called for the vote and the project was unanimously approved.

PROJECT AMENDMENTS

791 Washington, LLC, 791 Washington Street, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax and mortgage recording tax exemption benefits project which was originally approved by the Board on August 24, 2016, noting that the project has been amended due to the loss of the Buffalo Public Schools Culinary Institute as a tenant to the facility. The loss of the tenant will result in decreased project costs from \$79 million to approximately \$68 million, a decrease in commercial space and an increase in residential apartment space, and a decrease in the projected number of jobs estimated to be created from 130 to 30. Other than those changes, the project remains as originally proposed by the company and as accepted by the Agency.

Mr. Cappellino explained 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, and in particular, Mr. Cappellino noted that the material terms presented below reflect the amended project:

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 = \$80,535,000 85% = \$68,454,750
Employment	See Recapture Period	85% of Projected Jobs Projected Jobs = 30 Recapture Jobs = 25
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	2 Years After Project Completion	State and Local Sales Taxes Mortgage Recording Tax

In addition, Mr. Cappellino noted that the company is looking at providing an affordable housing component within its project.

Ms. McDuffie expressed satisfaction that the company is looking at placing affordable housing within the project and also noted that it is her understanding that the hotel is being targeted for Roswell Park and medical campus users as distinguished from being targeted for general users.

Ms. McDuffie moved and Mr. Nellis seconded to approve of the project.

Mr. State asked if the return on investment figure is changing due to the change in the scope of the project. Mr. Fairbrother, on behalf of the company, explained that the return on investment figure is decreasing due to the change in the size of the project but also noted that costs related to the project have similarly decreased.

Mr. Cappellino stated that staff has had several lengthy conversations with the developer regarding the inclusion of affordable housing within the project, and has learned that the company is looking at low income housing tax credit programs but because confirming the use of low income housing tax credits can take between 12-18 months to confirm, that program is not helpful.

Ms. Smith expressed a concern that mandating affordable housing will result in a loss of projects and particularly expressed a concern that the Policy Committee should not be making one off decisions with respect to affordable housing requirements.

Mr. Lipsitz then called for the vote and the project was then unanimously approved.

Curtiss Buffalo, Inc., 204-216 Franklin Street, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax and mortgage recording tax exemption benefits project that was original approved by the Agency on June 18, 2014, and noted that the company is asking for the original inducement resolution and project to be amended to account for increases in both the renovation and equipment budget to the original project to allow the developer to construct an additional 9,200 sq. ft. for an expanded roof top area and sidewalk café. Mr. Cappellino stated the increased benefit to the developer will be in the form of additional sales tax savings in the amount of \$466,250. Other than the new and expanded construction as described herein there are no other changes to the project as proposed, however, the company has increased its job commitment from 30 to 55.

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, and in particular, Mr. Cappellino noted that the material terms presented below reflect the amended project:

Draft Recapture Material Terms

Condition	Term	Recapture Provision
Total Investment	At project completion	Investment amount equal to or greater than 85% of project amount. Project Amount = \$24,130,000 85% = \$20,510,500
Employment	See Recapture Period	85% of Projected Jobs Projected Jobs = 55 85% of Projected Jobs = 46
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	The later of 2 Years after project completion or termination of Agent and Financial Assistance	Recapture of State and Local Sales Taxes and Mortgage Recording Tax

Ms. Whyte moved to approve of the project and thanked the company for proactively meeting with the Agency to address its cost increases prior to actually undertaking the construction. Ms. Whyte also noted that the company has pledged 25 new jobs in correlation to its new investment.

Ms. McDuffie seconded the motion to approve of the project and expressed her support for the project.

Mr. Vukelic expressed his support for the project.

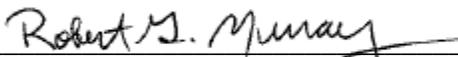
Mr. Lipsitz called for the vote and the project was unanimously approved as proposed.

CITY OF BUFFALO HOUSING UPDATE

Mr. Mehaffy, Executive Director of the City of Buffalo’s Office of Strategic Planning, provided an overview of the City’s ongoing Buffalo housing opportunity strategy, which is a study being undertaken to analyze affordable housing resources and their role in creating mixed income diverse neighborhoods within the City of Buffalo.

There being no further business to discuss, the meeting was adjourned at 9:58 a.m.

Dated: March 9, 2017



 Robert G. Murray, Secretary