

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

- MEETING:** August 3, 2017, at Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor Conference Room, Buffalo, New York
- PRESENT:** Rev. Mark E. Blue, Hon. Johanna Coleman, Colleen DiPirro, Richard Lipsitz, Jr., Hon. Joseph C. Lorigo, Brenda W. McDuffie, John J. Mudie, David J. State, and Maria Whyte
- ABSENT:** Hon. Byron W. Brown, Hon. Glenn R. Nellis, Laura Smith, Hon. Geoffrey M. Szymanski and Paul V. Vukelic
- OTHERS PRESENT:** John Cappellino, Executive Vice President; Karen M. Fiala, Assistant Treasurer; Dawn Boudreau, Compliance Officer, and Robert G. Murray, Secretary
- GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist; Rocco Termini, on behalf of 166 Chandler Holdings, LLC; Tom Fox, on behalf of Pearl Group, LLC

In the absence of the presence of a quorum, Mr. Lipsitz called the meeting to order at 8:39 a.m.

**PROJECT MATRIX**

Mr. Cappellino reviewed the Agency's project matrix. Mr. State queried if there are any recapture issues relating to any of the projects as presented on the matrix. Mr. Cappellino responded that in January 2016 the Agency approved financial assistance for Alt Store/Gordon Food Services to rehabilitate an existing facility for the purposes of establishing a wholesale restaurant supply commercial business for restaurant owners and operators. ECIDA staff became aware of a change in business such that the facility is now entirely retail and open to the general public and no longer a wholesale supplier to restaurant owners. Ms. Boudreau then provided further background noting that the violation here is not a recapture event violation, meaning it has nothing to do with an investment or job creation issue, rather it is a violation and default of the Agency's approval and Agent Agreement that the Agency entered into with the company. Ms. Boudreau noted that staff has spoken with the company and the company has asked for the Agency to consider written correspondence with respect to its new business plan that it will be submitting to the Agency today. Ms. Boudreau explained that if the company does not provide the business explanation, and/or, does not provide an explanation that shows the company's operations are in keeping with the project as approved, then staff will ask the Agency's counsel to initiate legal action to recover the sales tax that was improperly obtained. Mr. Cappellino stated that there is approximately \$180,000 in sales tax benefits at issue. Mr. Lipsitz stated that he believes the Agency should take action to recover the sales tax exemption

amount so claimed because the company did not apply as a retail project. Mr. Cappellino confirmed that this is a contractual violation and as such, does not fall under the Agency's recapture policy.

At this point in time, Ms. McDuffie joined the meeting. Mr. Lipsitz noted that a quorum is now present and officially called the meeting to order.

**MINUTES**

The minutes of the June 1, 2017 Policy Committee meeting were presented. Upon motion made by Ms. McDuffie, and seconded by Mr. Mudie, the aforementioned Policy Committee meeting minutes were unanimously approved.

Mr. Lipsitz then welcomed new Policy Committee member, Mr. Lorigo.

**PROJECT PRESENTATIONS**

166 Chandler Holdings, LLC, 166 Chandler Street, Buffalo, New York. Mr. Cappellino reviewed this proposed sales and use tax and mortgage recording tax exemption benefits project involving the renovation of an existing 40,000 facility along with the construction of a 10,000 sq. ft. addition thereto, that, once complete, will house the Thin Man Brewery which will occupy approximately 20,000 sq. ft. with the remaining 30,000 sq. ft. to ultimately be leased to incubator type tenants. Mr. Cappellino noted that Thin Man Brewery has experienced tremendous growth and that it was the tenant at the 155 Chandler Street project, however, it now requires greater space to undertake its operations and will be moving to this 166 Chandler Street location. Mr. Cappellino also noted that the facility is currently zoned industrial, such that no retail operations will be permitted at the site.

Mr. Cappellino stated that in exchange for providing the sales and use 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 = \$4,695,000 85% = \$3,990,750
Employment	2 years after project completion	Maintain Base = 7 FTE Create 85% of Projected Recapture Employment: 13 FTE
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Unpaid Tax	Same as Recapture Period	Adherence to policy

Pay Equity	Same as Recapture Period	Adherence to policy
Recapture Period	2 years after project completion	State and Local Sales Taxes Mortgage Recording Tax

Ms. Whyte thanked the company for undertaking the project and expressed support for the continued creative use of the Agency’s adaptive reuse program.

At this point in time, Mr. Rocco Termini spoke on behalf of the company and clarified that the project will also consist of an approximately 2,000 sq. ft. tasting room, which is retail by nature. Mr. Cappellino then asked Mr. Termini to confirm that costs allocated to the 2,000 sq. ft. tasting room will be less than 1/3 of the costs of the total project, and if it is, Mr. Cappellino stated that the project will not trigger any of the retail prohibitions.

Ms. McDuffie thanked Mr. Termini for undertaking the project and for his commitment to new job creation.

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

Pearl Group, LLC, 512 Pearl Street, Buffalo, New York. Mr. Cappellino reviewed this proposed sales and use tax and mortgage recording tax exemption benefits project involving the adaptive reuse of the former Buffalo Christian Center into a mixed use facility that will include professional meeting and banquet space, office space, a combination lounge, café and bar, indoor pool, fitness center and a steam room and sauna.

Mr. Cappellino stated that in exchange for providing the sales and use 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 the project amount. Project Amount = \$7,245,000 85% = \$6,158,250
Employment	Same as Recapture Period	Create 85% of Projected: Projected = 30 FT / 10 PT Recapture Employment = 29 FTE
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Unpaid Tax	Same as Recapture Period	Adherence to policy

Pay Equity	Same as Recapture Period	Adherence to policy
Recapture Period	2 Years After Project Completion	State and Local Sales Taxes Mortgage Recording Tax

Mr. Cappellino confirmed that the project is a retail project, however, Mr. Cappellino also confirmed that the project is located in a highly distressed area and, upon obtaining the consent of the Erie County Executive, the project can be approved as a permitted retail project. Mr. Cappellino also confirmed that the request for financial assistance is only related to the project as described herein and is not for the adjacent hotel and parking garage project. Mr. Cappellino then introduced Mr. Tom Fox who spoke on behalf of the company and provided a PowerPoint presentation with respect to the project.

At this point in time, Mr. Blue joined the meeting.

Ms. Whyte asked who will be able to use the pool, spa and conference space. Mr. Fox responded that the space is primarily available for hotel guests who will be staying in the adjacent facility.

Ms. Whyte then stated that this project, as a retail project, will require the consent of the County Executive and also stated that the County Executive will want to know what will happen if the Agency does not provide financial assistance to the project. Mr. Fox responded that the company does not yet have lending approvals, and obtaining Agency financial assistance will assist in obtaining lending approval such that if we cannot secure financing, the company will not undertake the project.

Ms. McDuffie referenced the return on investment noting that it is a risky project and also queried as to the cost of the adjacent hotel project. Mr. Fox responded that the company is making an approximately \$50,000,000 investment in the adjacent hotel project.

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

Mr. Blue then expressed support for the project and asked Mr. Fox if the company intends to hire minorities. Mr. Fox responded that the construction contract will entail an open bid process for any and all companies and trades.

Mr. Lipsitz queried as to the average wage of employees. Mr. Fox responded that the average wage is approximately \$33,000 and pay will range from approximately \$22,000 for part-time work to up to \$75,000 for full time management positions.

Ms. DiPirro confirmed her support for this adaptive reuse project.

Mr. Lipsitz then stated that the committee and the board is acutely aware of who one of the owners of the company is, and is aware of the perceptions that that person holds, and while the project does qualify for IDA financial assistance, Mr. Lipsitz expressly stated that he wants the company to understand that the affiliation of this one particular person is on every board member's mind and then stated that this does not come into consideration regarding whether to

vote in favor of the project. Mr. Fox responded that that particular person has no involvement or equity stake in this particular project.

Ms. McDuffie expressed her support for Mr. Lipsitz's comments and noted that this particular person is not listed in the ownership of the project presented to the Agency.

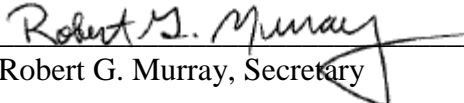
Mr. Blue stated that he would like to place on the record and be clear that projects that are attached to this particular person are difficult for Mr. Blue to consider, despite the fact that this is a good project.

Mr. Lorigo then spoke noting that this particular person has no ownership in the project and that, while he appreciates that Mr. Lipsitz won't let this factor into his vote, as a person who also bears the "sins of a father", he asked for the Committee to consider that this is a great project in and of itself and he also asked that the Committee consider that this certain person is not involved with this particular project.

Mr. Lipsitz called for the vote and the project was then unanimously approved with one abstention by Mr. Blue.

There being no further business to discuss, the meeting was adjourned at 9:38 a.m.

Dated: August 3, 2017

  
Robert G. Murray, Secretary