

**MINUTES OF THE MEETING  
OF THE  
MEMBERSHIP OF THE  
ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (ECIDA)**

**DATE AND PLACE:** September 28, 2016, at the Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor ESD Conference Room, Buffalo, New York 14203

**PRESENT:** Hon. Diane Benczkowski, Hon. Byron W. Brown, James F. Doherty, Hon. Joseph H. Emminger, Richard Lipsitz, Jr., David L. Lowrey, Brenda W. McDuffie, John J. Mudie, Hon. Glenn R. Nellis, Louis Panzica, Hon. Mark C. Poloncarz, Hon. Edward A. Rath, III, Sister Denise Roche, Paul V. Vukelic and Hon. Barry A. Weinstein

**EXCUSED:** Dottie Gallagher-Cohen, Frank B. Mesiah, and Hon. Darius G. Pridgen

**OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; Karen M. Fiala, Assistant Treasurer; Bradley Bach, Assistant Treasurer; and Robert G. Murray, Secretary

**GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist

There being a quorum present at 11:05 a.m., the meeting of the members of the Erie County Industrial Development Agency was called to order by its Chair, Ms. McDuffie.

Ms. McDuffie welcomed Sister Denise Roche and Lou Panzica as the newest members of the Agency.

**MINUTES**

The minutes of the August 24, 2016 Meeting of the Members were presented. Mr. Panzica noted two typos made within the minutes and Mr. Murray then corrected those typos. Mr. Rath moved and Mr. Nellis seconded to approve of the minutes. Ms. McDuffie called for the vote and the minutes were unanimously approved.

**REPORTS/ACTION ITEMS/INFORMATION ITEMS**

Financial Report. Mr. Bach presented the financial statements for August 2016 noting that the Agency as of August 31, 2016 has net assets of approximately \$28 million. The monthly income statement shows total revenues of approximately \$165,000, being approximately \$99,000 below budget, and expenses of approximately \$218,000, being approximately \$31,000 below budget. The year-to-date income statement shows revenues are below budget by approximately \$424,000, and operating expenses are approximately \$40,000 below budget. Net income for the year is \$4,306,883 and is approximately \$4,959,930 ahead of budget.

Mr. Poloncarz queried as to whether the Agency, given KeyBank's purchase of First Niagara Bank, should use KeyBank for its banking relationship or undertake a new request for proposals. Mr. Weathers stated that all accounts have switched over from First Niagara Bank to KeyBank and stated that the Agency is scheduled to undertake an RFP for banking services in 2017.

There being no further questions or comments, Ms. McDuffie directed that the report be received and filed.

Approval of 2017 Operating and Capital Budget. Mr. Weathers presented the proposed budget for 2017 noting that the Agency's Audit and Finance Committee has unanimously approved of the budget as proposed. Mr. Bach then reviewed the budget and noted that the Agency has budgeted for \$1,800,000 in administrative fees, which is based on a rolling 10 year average of prior year administrative fees, and also has budgeted for a one time receipt of approximately \$880,000 from the Agency's sale of its interest in GEMCOR resulting in total revenues of approximately \$3,400,000. Expenses are budgeted at \$3,200,000, net income is projected to be approximately \$195,000 and the Agency projects a net loss, after special projects, of \$695,000.

Mr. Weathers then reviewed the proposed budget for fiscal year 2017 special projects. Assuming all special project expenditures are made, a net loss of approximately \$9,200,000 is projected.

Mr. Bach then reviewed the 5 Year Capital Budget for 2017 through 2021 and explained various expenditure items contained therein.

Mr. Weathers then commented that the budget has been reviewed by Board members at two education sessions and reviewed and approved by the Agency's Finance and Audit Committee.

Mr. Panzica commented that the proposed budget for 2017 shows a decrease in administrative fees from the prior year, and an increase in salary and expenses over the prior year, such that, if the \$880,000 GEMCOR revenue was not realized, the Agency would have a significant loss for the year. General discussion ensued and Mr. Weathers provided additional background with respect to the Agency's administrative fees and fluctuations related to administrative fees over the prior 10 year period and over any given year. Mr. Doherty and Mr. Rath asked questions about the Bethlehem Steel and Red Cross Campus projects and general discussion ensued. Mr. Poloncarz moved and Mr. Doherty seconded to approve of the Agency's proposed Budget for fiscal year 2017 and the Agency's 5-Year Capital Budget for 2017-2021. Ms. McDuffie called for the vote and the motion was then unanimously approved.

2016 Tax Incentive Induced/Closing Schedule. Ms. Fiala presented this report. There being no questions, Ms. McDuffie directed that the report be received and filed.

## **RECAPTURE**

API Heat Transfer. Mr. Weathers reviewed the memorandum contained in the materials presented to the Board members describing the API Heat Transfer (the "Company") project, the Company's job commitment requirement as a material term and condition with respect to the Agency's provision of financial assistance for the Company project, and reviewed the Company's employment history noting that the Company is currently not meeting its job commitment requirements. Mr. Weathers then reviewed the various recapture options that were developed by

Agency staff and the Agency's Policy Committee and noted that option #2, contained in the Company's recapture options memo is the same remedy the Agency selected for the Derrick Corporation.

Mr. Lipsitz confirmed that the Policy Committee has reviewed the Company's employment issue and various recapture options, and had vigorous discussion and debate about the various options and by a vote of 7 in favor and 1 opposed, supported option #2. However, Mr. Lipsitz noted that the Policy Committee requires 8 votes to carry any action and therefore no recommendation with respect to the recapture options was made by the Policy Committee.

Mr. Panzica queried as to whether the Agency should consider the logic of recapturing sales tax and mortgage recording tax, especially given the fact that the Company has meet its investment obligation. Mr. Weather responded that, under option #2, the Agency is deferring potential recapture of sales and mortgage recording tax to allow the Company time to come into compliance with its employment commitments. Mr. Panzica then expressed support for option #3 that does not require sales tax or mortgage recording tax recapture because the Company has complied with its investment commitment and should therefore not be harmed by macroeconomic affects that have worldwide implications.

Mr. Poloncarz then moved to select option #2. Mr. Poloncarz stated that the Company was obligated to not only undertake the proposed investment, but also to maintain and create jobs. Mr. Poloncarz stressed that the Agency considers community benefits, including investment commitments, however, like Derrick Corporation, the Company had pledged to maintain its base level number of jobs and create new jobs in the community, so the benefit here to the community is, in addition to the investment, the maintenance and creation of jobs in the community. To date, Mr. Poloncarz stated the Agency has recaptured benefits from Derrick Corporation because their job pledge was not upheld. Here, we are giving the Company two years to come back into compliance with its job commitment before sales tax benefits would be recaptured.

Mr. Poloncarz then reminded Board members that recapture of financial assistance is a state law requirement, that all industrial development agencies must comply with the state law and that now, in Erie County, only those projects that need financial assistance to move forward are applying for benefits. As such, Mr. Poloncarz stated that the Agency has a responsibility when it approves of sales tax benefits, which affect every town and village in Erie County, to make sure job creation and job maintenance goals are upheld. Mr. Poloncarz stated he does not like the type of situation facing the Company because it means the Company is struggling but, Mr. Poloncarz stated the Agency has no other option to using the recapture provision in such a case because the community is not benefitting from the job maintenance and job creation that the Company agreed to adhere to. Option #2 is providing the Company with two years to rebuild its employment base and a pro rata recapture thereafter and as such, Mr. Poloncarz stated that the option is very fair and asked his fellow Board members to support Option #2.

Mr. Rath stated that there has been a lot of discussion related to the various recapture options and expressed concern about Option #2 as it is too aggressive and then expressed support for Option #3, with its pro rata provision, as being much more respectful of business. Mr. Rath stated that if the Agency uses the pro rata method, then the Agency is, on a pro rata basis, collecting only what the Company has not otherwise proportionally met. Without using a pro rata methodology, Mr. Rath stated that the Agency is over penalizing.

Mr. Weinstein asked for the reasons behind the layoffs of the Company's employees. Ms. Fiala responded that the decline in the oil and gas industry has resulted in less work for the Company and then work shortfalls resulted in employee layoffs. Mr. Weinstein then responded that the recapture component appears to be trivial to this worldwide company.

Mr. Lipsitz stated that the Company appeared before and addressed the Policy Committee, laid out the business reasons behind the loss of employment and expressed a commitment to continue its efforts to turn the business around. Mr. Lipsitz then expressed his support of Option #2.

Ms. Benczkowski then seconded Mr. Poloncarz's motion to support Option 2.

Mr. Vukelic expressed his support for Option #2 as being appropriate only if this is not a rubber stamp recommendation going forward.

Ms. McDuffie called for the vote and the motion passed by a vote of 13 in favor and 2 against, with Mr. Rath and Mr. Panzica voting against the motion.

## MANAGEMENT TEAM REPORTS

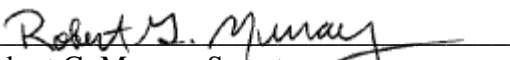
Mr. Weathers presented members with the proposed 2017 meeting schedule and provided a brief update to the Red Cross not-for-profit campus project. Mr. Weathers reviewed the Agency's involvement in the 43North pitch contest and noted that Agency staff recently participated in the United Way Day of Caring.

Mr. Weathers then mentioned that the Agency recently received the IEDC Bronze Award for its adaptive reuse program and congratulated Mayor Brown and County Executive Poloncarz for their leadership in overseeing the Agency's adaptive reuse program. Ms. McDuffie congratulated staff on the award and thanked staff for their excellent work.

Mr. Poloncarz thanked Mr. Weathers and Mr. Cappellino for presenting at last week's NYSAC meeting and commented on the cutting edge work of the Agency. Mr. Poloncarz also stated that he had recently sent a letter to the Clarence IDA objecting to the Clarence IDA's approval of an adaptive reuse project involving the tear down of an old building and the construction of a new building on the now barren site. Mr. Poloncarz expressed that he does not believe that type of project qualifies for adaptive reuse.

There being no further business to discuss, Ms. McDuffie adjourned the meeting at 12:00 p.m.

Dated: September 28, 2016

  
Robert G. Murray, Secretary