

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

DATE AND PLACE: October 24, 2018, at the Erie County Industrial Development Agency (the “ECIDA” or “Agency”), 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203

PRESENT: Hon. Diane Benczkowski, Rev. Mark E. Blue, Hon. Patrick B. Burke, Hon. Joseph H. Emminger, Tyra Johnson, Hon. Brian J. Kulpa, Richard Lipsitz, Jr., Brenda W. McDuffie, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen, Sister Denise Roche, Kenneth A. Schoetz, and Art Wingerter

EXCUSED: Hon. Bryon W. Brown, James F. Doherty, Dottie Gallagher, John J. Mudie and Charles F. Specht

OTHERS PRESENT: Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Karen M. Fiala, Assistant Treasurer; Mollie Profic, Chief Financial Officer; and Robert G. Murray, Secretary

GUESTS: Andrew Federick, Erie County Senior Economic Development Specialist; Christopher Pawenski, Coordinator, Industrial Assistance Program, of the Erie County Environment & Planning Department; and Mr. Robert Corrao on behalf of 1485 Niagara, LLC

There being a quorum present at 9:10 a.m., the meeting was called to order by Ms. McDuffie.

MINUTES

The minutes of the September 26, 2018 meeting of the members were presented. Mr. Wingerter moved and Rev. Blue seconded, to approve of the minutes. Ms. McDuffie called for the vote, and the minutes were then unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic presented the September 2018 financial report, noting that the balance sheet shows that the Agency finished the month with total assets of \$30.1 million and net assets of \$22.2 million. The monthly income statement shows operating revenue of \$169,000 in September. Operating revenue was ahead of budget for the month by \$124,000, due mainly to

administrative fees. Operating expenses were below budget by \$41,000, with the largest variances in general office expenses and salaries/benefits. Under strategic investments, there is a \$1,390,000 reimbursement to the UDAG fund from the ILDC as a result of the ILDC's receipt of the first half of its ESD grant for the Bethlehem Steel land acquisition. After this and depreciation, Ms. Profic noted there was net income of \$1.5 million for the month. The year to date income statement reflects operating revenue of \$1.5 million, being \$521,000 below budget for the year. Operating expenses of \$2.1 million are \$70,000 below budget for the year. After special project grants, strategic initiatives and depreciation, there is currently net income of \$589,000 for the year. There being no further discussion, Ms. McDuffie directed that the report be received and filed.

Approval of 2019 Operating and Capital Budget. Ms. Profic referred members to the 2019 draft budget and noted that since the draft budget was last reviewed by the members during its September Board meeting, that there have been no changes made that required additional approval by the Finance and Audit Committee. Ms. Profic noted that budget materials provided to members include a narrative version of changes to the budget for 2019 and specific projects included within the budget. Ms. Profic described the overall 2019 budget in comparison to the 2018 budget including 2018 projections and 2017 actual figures. Ms. Profic commented that the operating portion of the budget is a balanced budget. External projects are typically expenditures from UDAG funds which have built up over the years and have restrictions on use. Ms. Profic then reviewed the Three-Year Forecast and Capital Budget. Ms. Profic then summarized the net income and loss at the fund level for years 2012 through 2017, noting that this shows that the general fund has built almost \$5 million of "fund balance" over the last six years. Current general fund balance is \$10.2 million, which provides a cushion for the current year's projected loss.

Ms. McDuffie reminded members that this budget was reviewed at last month's board meeting. Mr. Poloncarz thanked staff for preparing a thorough and conservative budget. Mr. Poloncarz then moved to approve of the budget as presented. Mr. Burke seconded the motion. Ms. McDuffie called for the vote and the 2019 Budget and Three-Year Forecast was unanimously approved.

2018 Tax Incentive Induced/Closing Schedule/Estimated Real Property Tax Impact. Ms. Fiala presented this report. Ms. McDuffie directed that the report be received and filed.

Policy Committee Update. Mr. Lipsitz presented members with an update of the most recently completed Policy Committee meeting where Policy Committee members approved of, and determined to make a recommendation of approval to the Agency with respect to the 1485 Niagara, LLC project to be presented to members today. Ms. McDuffie then asked that the report be received and filed.

INDUCEMENT RESOLUTIONS

1485 Niagara, LLC, 1485 Niagara Street, Buffalo, New York. Ms. Fiala reviewed this proposed sales tax and mortgage recording tax exemption abatement project involving the

adaptive reuse of the existing structure to provide a mixed-use project consisting of commercial and residential uses. The project will involve the establishment of 14 market rate apartments and Ms. Fiala noted the developer has committed to making at least one of the residential units into an affordable housing rental rate being 90% of the AMI.

As a condition precedent of receiving financial assistance and as a material term and condition established by the Agency in connection with its approval of the project, Ms. Fiala noted that the Company must, subject to potential termination, modification and/or recapture of financial assistance, submit on at least an annual basis or as otherwise indicated below, through the conclusion of the later of two years following either (i) the construction completion date, or (ii) the termination of the Agent Agreement, a certification as so required by the Agency confirming:

- (i) Investment Commitment – the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$4,760,000.00 (which represents the product of 85% multiplied by \$5,600,000.00, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 53 existing full time equivalent (“FTE”) employees located at, or to be located at, the Facility as stated in the Company’s application for Financial Assistance (the “Baseline FTE”); and
 - the number of current FTE employees in the then current year at the Facility; and
 - that the Company has maintained FTE employment at the Facility equal to the Baseline FTE employees as stated in the Company’s application for Financial Assistance. In an effort to confirm and verify the Company’s employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency’s “Quarterly Employment Survey” form to be made available to the Company by the Agency.
- (iii) Local Labor Commitment - that the Company adheres to and complies with the Agency’s Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency’s Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency’s Unpaid Real Property Tax Policy.

Ms. Johnson asked if the company has confirmed that it will in fact provide the one affordable housing unit. Mr. Corrao, a representative on behalf of the company, responded that the company has committed to providing the affordable housing unit.

Mr. Nellis moved and Mr. Emminger seconded to approve the Project as proposed. Ms. McDuffie called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF 1485 NIAGARA, LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (i) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (ii) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iii) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iv) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (v) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT AND (B) A MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

Start-Up NY Affiliation Agreement. Mr. Cappellino provided brief background to board members regarding the New York State Start-Up NY program which allows New York State to designate certain areas as tax-free areas under which certain designated companies can conduct operations exempt from sales tax, income tax and real property taxes. Mr. Cappellino explained that the Agency has received a request from the University of Buffalo ("University") to assist in developing certain space owned by Queen City Encore LLC ("Queen City") in the Town of Hamburg as tax-free under the New York State Start-Up NY program where, in such a case, such space will then be subleased to a designated Start-Up NY company which will be permitted to operate as a New York State Start-Up NY entity and avail itself to the benefits of the Start-Up NY program. To establish the facility as a Start-Up NY program for the benefit of the tenant, the University, the Agency and Queen City must enter into a certain Affiliation Agreement by which the University confirms its affiliation with the Agency under the Start-Up NY program regulations. Thereafter, Queen City will then license use of its facility to the Agency and the Agency will sublicense the facility back to Queen City and Queen City will then enter into a sub-sublicense agreement with Start-Up NY entity, UltraCell Buffalo LLC. The purposes of the Start-Up NY program are to encourage investment and job creation and these purposes are consistent with the Agency's statutory powers and purposes.

Mr. Murray then explained that the resolution should be amended to reflect the name of the real property owner and noted that the resolution refers to that entity as “Queen City LLC” and Mr. Murray asked that the entity name be changed to Queen City Encore LLC and suggested that the resolution be further amended to state “Queen City Encore LLC or an affiliate or subsidiary thereof.”

Mr. Emminger then moved to approve of the Start-Up NY transaction, with Mr. Murray’s suggested amendment. Mr. Kulpa seconded the motion. Ms. McDuffie called for the vote and the following resolution was unanimously approved as amended:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN AFFILIATION AGREEMENT WITH THE STATE UNIVERSITY OF NEW YORK AT BUFFALO AND QUEEN CITY ENCORE LLC OR AN AFFILIATE OR SUBSIDIARY THEREOF (“QUEEN CITY”) IN CONNECTION WITH THE ESTABLISHMENT OF A TAX-FREE NEW YORK AREA FOR PURPOSES OF IMPLEMENTING THE START-UP NY PROGRAM; (ii) AUTHORIZING THE AGENCY TO ENTER INTO A LICENSE AGREEMENT WITH QUEEN CITY FOR CERTAIN REAL PROPERTY OWNED BY QUEEN CITY AND TO ENTER INTO A SUB-LICENSE AGREEMENT WITH QUEEN CITY PERMITTING QUEEN CITY TO OCCUPY CERTAIN REAL PROPERTY TO ESTABLISH A START-UP NY FACILITY FOR JOB CREATION AND INVESTMENT PURPOSES

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

157 Great Arrow Re-Authorization/Ratify Resolution. Mr. Weathers reminded members that the ECIDA adopted an inducement resolution on behalf of Sinatra and Company for the 157 Great Arrow project in October 2017. To date, no benefits have been provided and Mr. Weathers recalled that as part of the original application, a company representative signed the Unpaid Real Property Tax Certification stating that all real property taxes and assessments and/or special district charges were paid and current for properties owned by the company within Erie County. Following the adoption of the inducement resolution, Agency staff learned the Unpaid Real Property Tax Certification was not correct and that real property taxes on properties owned by the company were unpaid. The company has since paid all past due real property taxes and has submitted an explanatory letter and an Amended Unpaid Real Property Tax Certification. Mr. Cappellino explained that based on the company’s submission of the Amended Unpaid Real Property Tax Certification and payment of all past due taxes that Agency staff is asking the board to reaffirm the original resolution which will allow the company to proceed with its project and receive the benefits previously approved. Mr. Cappellino also stated that this is the first instance where Agency staff has identified an issue with the Unpaid Real Property Tax Certification.

Mr. Lipsitz recalled that one year ago, the Agency approved this project and recalled that there were community members who did not want the project approved however the board members relied on the Unpaid Real Property Tax Certification being accurate and voted yes because this is a good project and developers have a good track record. Then, earlier this year, Mr. Lipsitz stated he read an article in the Buffalo News wherein the company stated that it had chosen to purposefully not pay real property taxes as a business decision related to challenging tax assessments. Mr. Lipsitz stated there was a falsehood within the certification however the company has submitted a letter stating the person executing the form was uninformed and submitted it in error. In addition, Mr. Lipsitz did confirm that the company has made all past due taxes and submitted a new Certification stating the same.

Mr. Wingerter asked how the Agency would have reacted if it knew at the time of the application that the company had unpaid taxes while it challenged its tax assessments.

Mr. Poloncarz confirmed that companies must pay taxes to challenge assessments. Mr. Poloncarz then noted that the Agency implemented the Unpaid Tax Policy for a reason because there are many state-wide examples where companies seek IDA assistance while simultaneously owing real property taxes. Mr. Poloncarz stated if the Board had known at the time of application submission that there were unpaid taxes, he believes that the Board would not have approved of the project. Mr. Poloncarz then stated that an issue has arisen in the gap time period between when an application and certification is submitted and the time period thereafter before incentives are provided. So, with respect to this project, the policy did work because taxes were paid but on behalf of Erie County citizens, the Agency must make sure it is not providing financial assistance if a company already owes real property taxes.

Mr. Poloncarz stated that the company has paid its back taxes and stated he would support the ratification resolution but asked Agency staff and the Policy Committee to review the policy and consider whether real property tax certifications should be submitted annually throughout the term of the tax benefit period after an application is submitted.

Mr. Blue stated his concurrence with Mr. Poloncarz's statements and stated he would look forward to working with the Policy Committee as it reconsiders the Unpaid Real Property Tax Policy.

Mr. Lipsitz stated his concurrence with Mr. Poloncarz's suggestion and noted that the Agency has "caught" this in a timely manner such that no benefits were claimed while the unpaid taxes were outstanding.

Mr. Pridgen stated that the Agency is depending on the certification only, without any proof of same as so submitted by taxing jurisdictions and queried if the Agency should ask for more than just a certification form.

Mr. Cappellino noted that during the Agency's application process, companies must submit ownership structure and Agency staff is now working with the Erie County Assessor to confirm that the applicant and its owners are current with respect to real property taxes.

However, Mr. Cappellino noted there can be timing issues because it is not unusual for a project to be approved in one year but not closed and otherwise obtain financial assistance until a year later, so this timing issue must be considered.

Mr. Schoetz stated that with respect to the Great Arrow project, this appears to be a mistake and not a purposeful intent to deceive but did state that the company could have handled the press differently. However, Mr. Schoetz again stated because he does not see purposeful intent to deceive, he intends to approve of the ratification resolution.

Ms. Benczkowski queried if Agency staff will be asking the company to submit annual certifications now or will it consider revising its current policy.

Mr. Cappellino stated that staff will take Mr. Poloncarz direction and in consultation with the Policy Committee, review and potentially modify the existing policy.

Mr. Burke asked if there was an urgency with respect to approving of the project today and stated his discomfort with approving this particular project while at the same time, considering amending the underlying policy.

Mr. Cappellino stated there are two timing issues, one is with respect to the company's project and the other is with respect to the time period related to amending the policy and stated his belief, that if we act on the project now, it doesn't preclude us from making changes to the policy later.

Mr. Burke stated he believes this is a good project and does not want to vote no for this project but stated his belief that the Agency needs to take seriously incidents of inaccurate application submissions.

Sister Denise stated that the Agency learned something today, that there is the ability to allow the project to continue moving forward and stated she is okay with approving the ratification resolution because the company has paid its back taxes and at the same time is comfortable that the policy should be reviewed and potentially amended to insure that this issue does not arise again. Sister Denise then moved to accept the ratification resolution. Mr. Wingerter seconded the motion. Ms. McDuffie called for the vote, Mr. Burke stated he would abstain from the vote, and the following resolution was unanimously approved with Mr. Burke abstaining:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) RATIFYING AND CONFIRMING THE AGENCY'S FINDINGS AND DETERMINATIONS MADE IN THE RESOLUTIONS ADOPTED BY THE AGENCY ON OCTOBER 25, 2017 WITH RESPECT TO A CERTAIN PROJECT BEING UNDERTAKEN BY 157 GREAT ARROW LLC AND (ii) RATIFYING AND CONFIRMING THE DETERMINATION AUTHORIZING THE PROVISION OF FINANCIAL

ASSISTANCE AND THE EXECUTION AND DELIVERY OF DOCUMENTS
AS RELATED THERETO WITH RESPECT TO SUCH PROJECT

MANAGEMENT TEAM REPORT

Mr. Weathers informed Board members of a recent significant achievement by Agency Compliance Officer Dawn Boudreau who just recently completed a two year advanced degree program and received a Master of Jurisprudence in Business Law from Loyola University-Chicago and a Certificate in Compliance Studies. Ms. Boudreau was then recognized and congratulated for her effort and achievement.

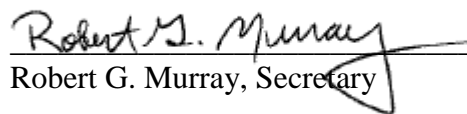
Mr. Weathers next noted that the Agency is continuing through its legal counsel request for proposal process, and informed members that seven proposals were received and the Agency is on track for February 2019 board approval.

Mr. Weathers also updated Board members on efforts by affiliate Buffalo and Erie County Industrial Land Development Corporation ("ILDC") to purchase real property to establish an Erie County agricultural park and related thereto, the ILDC will be, at a future meeting, asking the Agency to grant UDAG money to the ILDC to allow for the purchase of the real property.

Mr. Weathers also informed members that the ILDC will be hosting a public meeting to update the community on its master planning efforts for the Bethlehem Steel site.

There being no further business to discuss, Ms. McDuffie adjourned the meeting at 10:00 a.m.

Dated: October 24, 2018


Robert G. Murray, Secretary