

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

**DATE AND PLACE:** July 25, 2018, at the Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor ESD Conference Room, Buffalo, New York 14203

**PRESENT:** Rev. Mark E. Blue, Hon. Joseph H. Emminger, Dottie Gallagher, Richard Lipsitz, Jr., Brenda W. McDuffie, John J. Mudie, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen, Sister Denise Roche, Kenneth A. Schoetz, Charles F. Specht and Art Wingerter

**EXCUSED:** Hon. Diane Benczkowski, Hon. Byron W. Brown, Hon. Patrick B. Burke, James F. Doherty, Hon. Brian J. Kulpa, Tyra Johnson

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

**GUESTS:** Michael Szukala, Chair, Audit & Finance Committee; Maria Whyte, Deputy County Executive; Andrew Federick, Erie County Senior Economic Development Specialist; Rebecca Gandour, City of Buffalo Office of Strategic Planning; Christopher Pawenski, Coordinator, Industrial Assistance Program, of the Erie County Environment & Planning Department; Joel Marsh on behalf of Ebenezer Railcar Services, Inc.; David Stebbins on behalf of 683 Northland/BUDC

There being a quorum present at 9:27 a.m., Ms. McDuffie called the meeting to order.

**MINUTES**

The minutes of the June 27, 2018 meeting of the members were presented. Mr. Nellis moved, and Ms. Gallagher seconded, to approve of the meeting minutes. Ms. McDuffie called for the vote and the minutes were unanimously approved.

**REPORTS/ACTION ITEMS/INFORMATION ITEMS**

Financial Report. Ms. Profic reviewed the June 2018 financial report noting that the balance sheet shows that the Agency finished the month with total assets of \$30.5 million and net assets of \$20.9 million. The monthly income statement shows operating net income of \$152,000. Operating revenues exceeded budget for the month by \$26,000 due mainly to receipt of administrative fees.

Total operating expenses were below budget by \$45,000, with the largest variances in professional service costs and general office expenses. After factoring in strategic investments and depreciation, there was net income of \$165,000 for the month. The year to date income statement reflects operating revenue of \$859,000, being \$500,000 below budget for the year. Operating expenses of \$1.4 million are slightly below budget for the year. After special project grants, strategic initiatives and depreciation, there is currently a net loss of \$726,000 for the year.

Ms. Gallagher noted that revenues still not catching up to the budget amount and asked if or when the ECIDA should become concerned.

Ms. Profic noted that the ECIDA anticipates receipt of \$500,000 in administrative fees through the remainder of the year, and also noted that the ILDC will be closing on two bond transactions by the end of the year as well. Ms. Profic also stated that the ECIDA is trending, percentage wise, similar to how the ECIDA fared in 2010, and noted that in 2010 the ECIDA met its budget.

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

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 provided members with an update from the most recently completed Policy Committee meeting, noting that the Policy Committee has unanimously approved all three projects that are before the Board members today. Ms. McDuffie directed that the report be received and filed.

## **INDUCEMENT RESOLUTIONS**

Column Development, 380 Dick Road, Cheektowaga, New York. Mr. Cappellino reviewed this proposed sales tax, mortgage recording tax and real property tax abatement benefits project involving the construction of a 45,000 sq. ft. building for lease to L&W Supply Corporation.

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, Mr. Cappellino noted that the Company must, subject to potential termination and/or modification and/or recapture of financial assistance, submit on at least an annual basis or as otherwise indicated below, through the conclusion of the PILOT 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 \$2,550,000.00 (which represents the product of 85% multiplied by \$3,000,000.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment - that there are at least 30 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 and created FTE employment at the Facility equal to 36 FTE employees [representing the sum of the Baseline FTE plus 6 (the product of 85% multiplied by 8, being the total number of new FTE employee positions as proposed to be created by the Company 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.

Mr. Nellis moved and Mr. Blue seconded to approve of the project as proposed. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF COLUMN DEVELOPMENT, INC., 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; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (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, (B) A MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT, AND (C) A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT,

LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE AGREEMENT, AND RELATED DOCUMENTS

Ebenezer Railcar Services, Inc., 1001 Indian Church Road, West Seneca, New York. Ms. Fiala reviewed this proposed sales tax and real property tax abatement benefits project involving the construction of a new 94,000 sq. ft. manufacturing space to eventually combine the operations located in West Seneca and Village of Blasdell.

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 and/or modification and/or recapture of financial assistance, submit on at least an annual basis or as otherwise indicated below, through the conclusion of the PILOT 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 \$5,100,000.00 (which represents the product of 85% multiplied by \$6,000,000.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment - that there are at least 84 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 and created FTE employment at the Facility equal to 95 FTE employees [representing the sum of the Baseline FTE plus 11 (the product of 85% multiplied by 13, being the total number of new FTE employee positions as proposed to be created by the Company 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. Gallagher moved and Mr. Mudie seconded to approve of the project as proposed.

Mr. Poloncarz queried as to whether the facility that is to become formerly occupied by the company received a PILOT abatement in the past. Ms. Fiala confirmed that no PILOT abatement was placed on that facility.

Mr. Lipsitz queried as to where the company finds its employees. The company responded that it places ads in the paper and finds employees through BOCES, but noted welding is a competitive environment from which to find qualified employees and further noted that the company trains new hires in welding as well.

Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF EBENEZER RAILCAR SERVICES, INC., 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; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (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 PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

#### **AMENDATORY INDUCEMENT RESOLUTION**

683 Northland LLC / Buffalo Urban Development Corporation, 683 Northland & WNY Workforce Training Center, 683 Northland Avenue, Buffalo, New York. Ms. Fiala reviewed this proposed amendment to the sales tax benefit project involving Phase II of the project which will renovate and equip the remaining 121,000 sq. ft. of the complex. Buffalo Manufacturing Works ("BMW") will be the anchor tenant and will occupy approximately 51,000 sq. ft.

Ms. Gallagher and Mr. Pridgen stated that they are both members of the board of directors of BUDC, the entity that owns the applicant 683 Northland Avenue LLC, and stated they will recuse themselves from participating in discussions and voting upon this project.

Mr. Poloncarz queried as to receipt of the administrative fee that will be received by the ECIDA to address Ms. Gallagher's budget concerns. Ms. Fiala noted the ECIDA agreed to collect, for Phase I of this project, its fee in seven equal installments over 7 years being \$70,000 per year. For Phase II, Ms. Fiala noted staff is still discussing with the company but may request that the \$200,000 fee be paid in full at closing.

Mr. Poloncarz moved and Mr. Blue seconded to approve of the project as amended. Ms. McDuffie then called for the vote and the following resolution was unanimously approved, with Ms. Gallagher and Mr. Pridgen abstaining:

AMENDATORY INDUCEMENT RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE APPROVAL OF THE REVISION TO THE PROJECT DESCRIPTION AND THE EXECUTION AND DELIVERY OF A REVISED SALES TAX EXEMPTION PACKAGE AND RELATED DOCUMENTS WITH RESPECT TO THE 683 NORTHLAND LLC PROJECT (AS MORE FULLY DESCRIBED BELOW)

#### **MANAGEMENT TEAM REPORT**

Mr. Weathers provided members with information about the Erie County Microenterprise Loan Program.

Mr. Weathers provided members with a timetable regarding the upcoming Legal RFP anticipated to be issued in September, 2018.

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

Mr. Weathers then asked for the Agency to enter into Executive Session to discuss the financial history of a particular company. Mr. Murray advised members that the Agency can enter Executive Session for the purpose of discussing the financial history of a particular person or corporation and as such, the request to enter into Executive Session is to permit the Agency to discuss the financial history of a particular person or corporation. Ms. Gallagher moved and Mr. Blue seconded to enter into Executive Session for the purpose as described above. The motion was then unanimously approved.

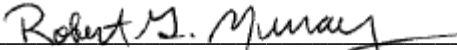
At 9:51 a.m., the Agency entered into Executive Session.

Upon motion made by Mr. Lipsitz and seconded by Mr. Schoetz, and unanimously approved, the Agency terminated Executive Session at 10:21 a.m.

Ms. Gallagher moved, and Mr. Nellis seconded, to direct ECIDA staff to confer with the New York State Department of Taxation and Finance for purposes of clarifying the role of an IDA as related to the collection of sales tax overages. Ms. McDuffie then called for the vote and the aforementioned motion was unanimously approved.

There being no further business to discuss, Ms. McDuffie adjourned the meeting at 10:28 a.m.

Dated: July 25, 2018

  
Robert G. Murray, Secretary