

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

**DATE AND PLACE:** August 23, 2017, 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, Rev. Mark E. Blue, Hon. Byron W. Brown, James F. Doherty, Hon. Joseph H. Emminger, Tyra Johnson, Richard Lipsitz, Jr., Hon. Joseph C. Lorigo, David L. Lowrey, John J. Mudie, Hon. Glenn R. Nellis, Louis Panzica, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen and Hon. Barry A. Weinstein

**EXCUSED:** Dottie Gallagher-Cohen, Brenda W. McDuffie, Sister Denise Roche and Paul V. Vukelic

**OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Mollie Profic, Treasurer; and Robert G. Murray, Secretary

**GUESTS:** Maria Whyte, Deputy County Executive; Andrew Federick, Erie County Senior Economic Development Specialist

At 9:04 am, Mr. Lipsitz called the meeting to order in the absence of the presence of the chair, Ms. McDuffie.

**MINUTES**

The minutes of the June 28, 2017 meeting of the members were presented. Mr. Lorigo moved, and Mr. Lowrey seconded, to approve of the meeting minutes. Mr. Lipsitz called for the vote and the minutes were unanimously approved.

**REPORTS/ACTION ITEMS/INFORMATION ITEMS**

Financial Report. Ms. Profic reviewed the July 2017 financial statements noting that the balance sheet shows that the Agency finished the month with total assets of \$36.3 million and net assets of \$25.4 million.

The monthly income statement shows operating income of \$9,400, and operating revenues of \$310,000, \$256,000 of which was administrative fees, putting the Agency ahead of budget by approximately \$100,000. July operating expenses were under budget by \$19,000 as a result of favorable variances in salaries and benefits, general office expenses, and professional services. Taking into account solely operating revenues and operating expenses, there was net income of \$86,000 for July. However, after special grants, costs for strategic initiatives and

depreciation, there was a net loss of \$1.8 million for the month. Most of this loss is the grant from the ECIDA to the ILDC for the ILDC's purchase of the Bethlehem Steel property in the amount of \$1,700,000. The year-to-date income statement reflects operating revenue of approximately \$1,800,000, which is \$359,000 ahead of budget for the year. The driver of that variance is administrative fees, which at \$1,400,000, are in excess of budget by \$368,000 through the month of July. Operating expenses of \$1,700,000 are under budget by approximately \$183,000. Net special project grant revenue of \$321,000 brings net income for the year to \$410,000. After factoring in strategic investments and depreciation, Ms. Profic noted there is a year-to-date net loss of \$2,900,000. Mr. Lipsitz directed that the report be received and filed.

2017 Tax Incentive Induced Closed Schedule Estimated Real Property Tax Impact. Ms. Fiala presented this report. Mr. Blue asked for an update on the Pilgrim Village Project. Mr. Cappellino responded that the owner of the project has lost his original investment partner, and is currently looking for a new partner to help finance the project. There being no further questions, Mr. Lipsitz 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 committee approved the three projects that will be before this board today. Mr. Lipsitz then directed that the report be received and filed.

Finance & Audit Committee Update. Ms. Profic updated members on the August 17, 2017 joint meeting of the ECIDA, RDC and ILDC Finance & Audit Committee wherein the Committee reviewed and discussed the process regarding the recent Banking Request For Proposals, noting that the Committee will be recommending next that the board approve M&T Bank as the ECIDA's primary bank. Ms. Profic also commented that she reviewed the Bethlehem Steel site transaction, and the status of the Agency's financial report with respect to the annual budget for 2017. Mr. Lipsitz directed that the report be received and filed.

Banking Request for Proposal. Ms. Profic reviewed the Professional Services Request for Proposal process by which the Agency, the RDC and the ILDC have conducted a joint request for proposals for banking services. Ms. Profic noted that the 10 largest banks in Erie County, as ranked by Buffalo Business First were contacted to inquire whether they have a government banking area. RFPs were then sent to 8 banks in total, 7 from the top 10 largest banks and one bank was sent the RFP based on past verbal expression of interest. Ads were also placed in the Buffalo News and the Challenger Community News. Notice of the RFP was also placed on the website. Five responses to the RFP were received from Community Bank, N.A., Citizens Bank, Evans Bank N.A., KeyBank N.A. and M&T Bank.

Ms. Profic then noted that an internal staff committee scored the proposals based on specific criteria as provided to board members. A short list of three banks was developed and the staff committee requested additional questions from those three short-listed banks. After receiving answers to those questions, the top 2 banks were then interviewed. As a result, the internal staff committee unanimously recommends M&T Bank due to the following: (1) M&T offered competitive interest rates and the highest earnings credit rate; (2) M&T has a dedicated government banking team headquartered in Buffalo; (3) the principal relationship manager for ECIDA has over 11 years of government banking experience; (4) clients include other IDAs, state agencies, counties, and public authorities; (5) M&T Bank offered a no service charge

proposal if they were selected as the prime deposit bank; (6) M&T has received and “outstanding” CRA rating since 1989; and (7) M&T offers a dedicated project management team to assist us with our banking transition. The committee also felt M&T’s web-based banking, transaction services, and positive pay features were superior.

Ms. Profic also noted that on August 17, 2017, the Joint Finance & Audit Committee reviewed the RFP results as described above and recommended that the Board approve the selection of M&T Bank as the prime bank.

Mr. Emminger commented that M&T Bank is the bank for the Town of Tonawanda and believes the Bank offers a good deal to the ECIDA. Mr. Weinstein also noted that Amherst currently uses M&T Bank and is happy with their services. Mr. Poloncarz then noted that M&T Bank is also the County’s bank and further informed members that the ILDC just approved M&T Bank as its bank related to the same RFP process.

Mr. Poloncarz moved and Mr. Weinstein seconded to approve the selection of M&T Bank to provide banking, cash management, and investment services to the Agency. Mr. Lipsitz called for the vote and the motion was then unanimously approved.

Gordon Restaurant Market, LLC. Mr. Weathers updated members on the status of the sales tax recapture related to the Gordon Foods Project due to the change in the project from what was an approved commercial warehousing project to what is now a retail project. Mr. Weathers mentioned that the staff has been working with the company and has made a demand that the company return all sales tax benefits claimed by the company. Mr. Poloncarz commended staff for their efforts to hold the company accountable and that by converting from a wholesale commercial project to a retail endeavor, the Agency did not approve this as a retail project and even if it had, the law would have required the Erie County Executive to consent to such a retail project and being the Erie County Executive, Mr. Poloncarz noted he did not give such consent nor would he give consent for this type of retail project. Mr. Poloncarz concluded by stating the Agency needs to follow the law and recapture the sales tax benefits.

Mr. Weathers noted that he has made a demand of the company to make full payment of the sales tax incentives by August 31, 2017, and if payment is received by then, the Agency will waive attorney fees as an incentive to get the company to make the payment.

Mr. Cappellino noted that the company has confirmed that it is now a retail operation.

There being no further discussion, Mr. Lipsitz directed that this report be received and filed.

## **INDUCEMENT RESOLUTIONS**

166 Chandler Holding, LLC, 166 Chandler Street, Buffalo, New York. Ms. Fiala reviewed this proposed sales tax and mortgage recording tax abatement benefits project involving the renovation of an existing 40,000 square foot facility along with the construction of a 10,000 square foot addition that, once complete, will house the Thin Man Brewery which will occupy approximately 20,000 square feet with the remaining square footage to be leased to incubator type tenants along with an approximate 2,000 square foot tasting room. Ms. Fiala noted that ECIDA benefits will be limited to only the manufacturing and incubator space.

As a condition precedent of receiving financial assistance and as a material term and condition established by the Agency in connection with approval of the project, Ms. Fiala noted that the company must, subject to potential termination and/or modification and a recapture of financial assistance, submit on an annual basis or as otherwise indicated below, through the conclusion of the later of two years following either the construction completion date or 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 \$3,990,750.00 (which represents the product of 85% multiplied by \$4,695,000.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment - that there are at least 7 existing full-time equivalent ("FTE") employees [representing 5 FTE employees plus 5 part-time equivalent ("PTE") employees (with 2 PTE employees counting as 1 FTE employee)] located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE/PTE"); and
  - the number of current FTE/PTE employees in the then current year at the Facility; and
  - that the Company has maintained and created FTE/PTE employment at the Facility equal to 13 FTE employees [representing the sum of Baseline FTE/PTE plus 6 (the product of 85% multiplied by 7, being the total number of 5 new FTE employee positions and 5 new PTE employee positions (with 2 PTE employees counting as 1 FTE employee) 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. Johnson queried as to the status of Thin Man Brewery because the same brewery has been identified as a tenant in another ECIDA approved project. Ms. Fiala confirmed that this tenant is now moving to this new project, but the company is still adhering to the pledge of job creation with respect to the abandoned space at the facility in which Thin Man Brewery had originally intended to occupy.

Mr. Weinstein moved, and Mr. Emminger seconded, to approve the project as proposed. Mr. Lipsitz then called for the vote and the following resolutions were unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT THE ACTION TO UNDERTAKE THE 166 CHANDLER HOLDINGS, LLC PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT.

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF 166 CHANDLER HOLDINGS, 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; (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 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

Pearl Group, LLC, 512 Pearl Street, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax and mortgage recording tax exemption benefits project involving the historic renovation and adaptive reuse of the former Buffalo Christian Center. The renovation will include a mix of uses including professional meeting and banquet space, office space, a combination lounge, café and bar and fitness center. Mr. Cappellino also noted that the project is located in a highly distressed area and in compliance with Section 862 of the New York General Municipal Law, the written consent of the Chief Executive Officer of Erie County will be required prior to the provision of any financial assistance.

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 a recapture of financial assistance, submit on an annual basis or as otherwise indicated below, through the conclusion of the later of two years following either the construction completion date or 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 \$6,158,250.00 (which represents the product of 85% multiplied by \$7,245,000.00, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment - that the Company has created full-time equivalent (“FTE”) employment at the Facility equal to 29 FTE employees [representing the product of 85% multiplied by 35 (being the 30 new FTE employee positions plus 10 new part-time equivalent (“PTE”) employees (with 2 PTE employees counting as 1 FTE employee) 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.

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

Mr. Cappellino then confirmed that no IDA financial assistance is being or has been provided for the adjacent and related hotel project.

Mr. Blue queried if this is the same company that owns the hotel project across the street. Mr. Cappellino responded in the affirmative.

Mr. Poloncarz confirmed that the Agency is not providing assistance to the adjacent hotel and the assistance being considered here is consistent with the Agency’s adaptive reuse policy.

Mr. Weinstein moved, and Mr. Lorigo seconded, to approve the project. Mr. Lipsitz then called for the vote, and the following resolutions were approved by a vote of fourteen in favor, with one abstention by Mr. Blue:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT ACTION TO UNDERTAKE THE PEARL GROUP, LLC PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF PEARL GROUP, 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; (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 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

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

Western New York Foreign Trade Zone Operators/Punto Franco Ltd., 10 Gates Avenue, Lackawanna, New York. Mr. Cappellino reviewed this proposed sales, mortgage recording tax and real property tax abatement benefits project involving the construction of a 20,000 sq. ft. expansion of the company’s existing warehousing operations along with the purchase of associated machinery and equipment.

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 an annual basis or as otherwise indicated below, throughout the conclusion of the termination 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 \$1,496,000.00 (which represents the product of 85% multiplied by \$1,760,000.00, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least five (5) 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 seven (7) FTE employees representing the sum of the Baseline FTE plus two (2) (the product of 85% multiplied by three (3), 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. Cappellino noted that Mr. Drew Schapiro, Director of Development for the City of Lackawanna, spoke in favor of the project at the public hearing.

Mr. Poloncarz confirmed Lackawanna's support for the project and noted that the project is a benefit for the entire region.

Mr. Blue moved, and Mr. Lowery seconded it, to approve the project. Mr. Lipsitz then asked for the vote and the following resolutions were unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT THE ACTION TO UNDERTAKE THE WESTERN NEW YORK FOREIGN TRADE ZONE OPERATORS/PUNTO FRANCO LTD PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF WESTERN NEW YORK FOREIGN TRADE ZONE OPERATORS/PUNTO FRANCO LTD., 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) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (iv) 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

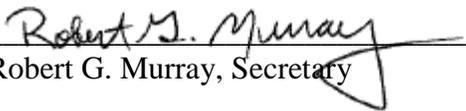
EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT, AND (C) A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (v) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

## MANAGEMENT TEAM REPORT

Mr. Lipsitz then asked for an attorney–client privilege session and directed that the room be vacated and only Board Members and Agency staff remain present to meet with general counsel, Mr. Murray. Mr. Murray then explained that this was not an Executive Session, rather an attorney-client privilege session and at 9:35 a.m. the attorney-client privilege session began.

At 9:45 a.m., the attorney-client privilege session was then terminated and Mr. Lipsitz then opened the meeting to the public once again, and promptly adjourned the meeting at 9:45 a.m.

Dated: August 23, 2017

  
Robert G. Murray, Secretary