



Policy Committee

September 6, 2018
8:30 am
95 Perry Street, 5th Floor Conference Room
Buffalo, NY 14203

1. Call Meeting to Order
2. Approval of the July 12, 2018 Policy Committee Minutes (Pages 2-7)
3. Project Matrix (Page 8)
4. Policy Discussion/Action
 - a. Job Retention Material Terms Recommendation (Pages 9-14)
5. Updates/Discussion
 - a. Adaptive Reuse Working Groups – (Informational)
6. Adjournment – Next Meeting October 4, 2018 at 8:30 a.m.

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

- MEETING:** July 12, 2018, at Erie County Industrial Development Agency, 95 Perry Street, 5th Floor Conference Room, Buffalo, New York
- PRESENT:** Hon. April Baskin, Rev. Mark E. Blue, Hon. Johanna Coleman, Mr. Richard Cummings, Hon. William J. Krebs, Richard Lipsitz, Jr., Brenda W. McDuffie, John J. Mudie, Hon. Glenn R. Nellis, Laura Smith, David J. State and Maria Whyte
- ABSENT:** Hon. Byron W. Brown and Colleen DiPirro
- OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; and Robert G. Murray, Secretary
- GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist and Rebecca Gandour, City of Buffalo Office of Strategic Planning, Joel Marsh on behalf of Ebenezer Railcar Services, Inc., David Stebbins on behalf of 683 Northland Avenue

There being a quorum present at 8:31 a.m., Mr. Lipsitz called the meeting of the Policy Committee to order.

MINUTES

The minutes of the June 7, 2018 Policy Committee meeting were presented. Upon motion made by Mr. Mudie, and seconded by Mr. Krebs, the aforementioned Policy Committee meeting minutes were unanimously approved.

PROJECT MATRIX

Mr. Cappellino reviewed the Agency's project matrix. Mr. Lipsitz directed that the report be received and filed.

PROJECT PRESENTATIONS

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

Mr. Cappellino then stated that in exchange for providing the sales and use tax, mortgage recording tax and real property tax abatement benefits, the approval of this project will be

conditioned upon adherence to certain material terms and conditions with respect to the 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 = \$3,000,000 85% = \$2,550,000
Employment	Construction Phase and PILOT Term or 2-years after project completion	Maintain Base = 30 Create 85% of projected Projected = 8 85% = 6 Recapture Employment = 36
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Coincides with 7-year PILOT	Adherence to policy
Unpaid Tax	Coincides with 7-year PILOT	Adherence to policy
Recapture Period	Coincides with 7-year PILOT	Recapture of state and local sales tax, mortgage recording tax and real property taxes.

At this point in time, Ms. Coleman joined the meeting.

Ms. Smith then spoke in favor of the project.

Mr. Nellis moved and Ms. Whyte seconded to approve of the project as proposed. Mr. Lipsitz called for the vote and the project was then unanimously approved for recommendation to members of the Agency.

Ebenezer Railcar Services, Inc., 1001 Indian Church Road, West Seneca, New York. Mr. Cappellino reviewed this proposed sales tax and real property tax abatement benefits project involving the construction of a new 94,000 sq. ft. facility to allow the company to improve efficiencies with respect to its manufacturing operations.

Mr. Cappellino then stated that in exchange for providing the sales and use tax and real property tax abatement benefits, the approval of this project will be conditioned upon adherence to certain material terms and conditions with respect to the 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 = \$6,000,000 85% = \$5,100,000
Employment	Coincides with 7-year PILOT	Maintain Base = 84 Create 85% of projected Projected = 13 85% = 11 Recapture Employment = 95
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity/ Unpaid Tax	Coincides with 7-year PILOT	Adherence to policy
Recapture Period	7-year PILOT Term	Recapture of state and local sales tax and real property taxes.

At this point in time, Mr. Cappellino introduced the Committee to Mr. Joel Marsh, Chief Financial Officer and representative of the company.

Ms. Whyte then asked Mr. Marsh what the company would do if it was unable to obtain financial assistance from the Agency. Mr. Marsh stated that the company has an existing manufacturing facility in Colorado, however, the company desires to make this investment in New York but if this investment was not provided financial assistance, it is possible that the investment could go to its Colorado facility.

Ms. McDuffie spoke in favor of the project.

Mr. Lipsitz asked Mr. Marsh where the company finds new employees. Mr. Marsh responded that welders are very difficult to find right now so the company provides on the job training for its new employees.

Mr. State asked Mr. Cappellino if the Agency had followed its inter-municipal move policy. Mr. Cappellino responded in the affirmative noting that the Agency has sent information to and spoke with both Town of Hamburg and Town of Blasdell representatives and no objections were raised.

Ms. McDuffie then moved and Mr. Mudie seconded to approve of the project as proposed. Mr. Lipsitz called for the vote and the project was then unanimously approved for recommendation to members of the Agency.

683 Northland Avenue/BUDC, 683 Northland Avenue, Buffalo, New York. Mr. Cappellino presented this amended financial assistance application to provide funding for Phase II of the already approved 683 Northland Avenue/Buffalo Urban Development

Corporation project located at 683 Northland Avenue. Mr. Cappellino reminded members that the Agency had already approved the company's project in May, 2017 involving the renovation of an existing and vacant 239,000 sq. ft. manufacturing facility to house the WNY Workforce Training Center ("WTC") for Advanced Manufacturing and Electrical Utilities. The company has obtained financing to undertake the second phase of the project which will involve renovating and equipping the remaining portions of the facility not already renovated under Phase I of the project. The project amendment is needed to account for increase project costs and to allow for additional sales tax exemption benefits.

Mr. Cappellino then explained that in exchange for providing the sales and use tax exemption benefit, the approval of this project will be conditioned upon adherence to certain material terms and conditions with respect to the potential modification, recapture and/or termination of financial assistance as follows below. Mr. Cappellino confirmed that the material terms involve the same project as initially approved, however, also involve the sum total of project expenditures for both Phase I and Phase II of the project.

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 = \$99,035,011 85% = \$84,179,759
Employment	See Recapture Period	Create 85% of projected Projected = 18 85% = 15 Recapture Employment = 15
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	See Recapture Period	Adherence to policy
Unpaid Tax	See Recapture Period	Adherence to policy
Recapture Period	Coincides with 7-year PILOT term	Recapture of state and local sales tax and mortgage recording tax

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

Mr. Cappellino again confirmed that the proposed amendment is to allow for an increase in the total sales tax exemption benefit. At this point in time, Mr. Cappellino introduced Mr. David Stebbins who spoke on behalf of the project. Mr. Stebbins then gave Committee members a review and explanation of the project as proposed.

Ms. Whyte noted that she is a member of the Buffalo Urban Development Corporation and as such, stated she would be recusing herself from participating in the discussion and voting on this matter.

Mr. Lipsitz and Ms. McDuffie then both spoke in favor of the project.

Mr. Cummings commented that the project has favorable MWBE procurement and participation. Mr. Cummings then asked if the Agency typically requires MWBE participation. Mr. Cappellino responded that MWBE requirements depend on funding sources such that if the State provides funding, MWBE goals are typically required. If the project does not have those types of funding sources, the Agency does not then establish MWBE requirements, however, the Agency does require that local labor is utilized with respect to construction.

Mr. Cummings moved and Mr. Blue seconded to approve of the project as proposed. Mr. Lipsitz called for the vote and the project was then unanimously approved, with Ms. Whyte recusing herself, for recommendation to members of the Agency.

POLICY DISCUSSION

Mr. Cappellino referred Committee members to the memorandum contained in their Committee package and noted that the purpose of the memorandum contained therein with respect to material term job retention requirements is to outline a policy proposal to establish a percentage threshold for job retention below the current 100% requirement as a material factor. Mr. Cappellino explained that since the material factor of 100% job retention was established in 2013, Agency staff has begun to experience incidents where companies have had compliance issues with the 100% retention requirement as a result of typical workforce turnover, including employee's leaving unexpectedly, end of year retirements, deaths, etc. With the current requirement at 100%, the unexpected or unplanned loss of just one employee can result in a technical default of a company's agreement with the Agency triggering recapture proceedings. Additionally, some companies are experiencing difficulties filling open positions for extended periods of time, leading them to run afoul of their IDA job retention requirement.

By way of example, Mr. Cappellino referred Committee members to correspondence received by Sodexo wherein Sodexo noted that it was required to retain 511 jobs, however, to date, Sodexo has experienced higher than normal turnover which is currently resulting in a deficit of 24 positions for which the company has 24 active postings. Mr. Cappellino noted that Sodexo is experiencing fluctuation with respect to its existing employment due to natural turnover attributed to retirement and career moves.

Mr. Cappellino then again referred members to the memorandum contained in the Committee materials and described that Agency staff is proposing a policy change that would involve a two-tiered job retention goal as follows:

1. Companies with employment at application of 150 employees or less would be required to maintain 90% of their retained employment level for the recapture period as set at project approval.
2. Companies with more than 150 employees would be required to maintain 95% of their retained employment level for the recapture period as set at project approval.

Mr. Cappellino again confirmed that the two-tiered retention concept is one that attempts to provide some flexibility to businesses with respect to retaining the number of existing jobs at the time companies make applications to the Agency for financial assistance and is very similar to the 85% requirement the Agency requires with respect to new jobs pledged to be created.

General discussion ensued.

At this point in time, Mr. Cappellino also advised Committee members of a request by API Heat Transfer to terminate the PILOT Agreement provided to the Company by the Agency since 2015. Mr. Cappellino confirmed that API has had difficulties maintaining its job commitments, and although it has allowed real property tax exemption benefits to be recaptured for each year of shortfall, meaning, API has ended up paying full taxes, it now desires to terminate the PILOT, thus placing the property fully on the tax rolls, as it does not anticipate that it will be able to recover the jobs and headcount to bring it back into compliance with the PILOT Agreement.

Mr. Cappellino then concluded that the Agency staff recommendations are intended to provide flexibility to companies in recognition of natural turnover and as a practical matter, align job retention with job creation goals.

Ms. Whyte thanked Agency staff for their efforts and for their proposal. Ms. Whyte then moved and Mr. Nellis seconded to approve of the policy as proposed.

General discussion ensued.

At this point in time, Ms. Baskin and Mr. Nellis left the meeting.

Ms. McDuffie expressed concern that consideration for the policy change be given to distinguish between layoffs versus natural turnover. Further discussion ensued, and Ms. Whyte then made a motion to withdraw her original motion and then asked staff to revise the proposal to reflect the discussion and consideration of the Policy Committee.

Mr. Lipsitz then directed staff to continue working on and revising the proposal for additional consideration at the next Policy Committee meeting.

UPDATES/DISCUSSION

Adaptive Reuse Working Group. Mr. Cappellino provided members with an update on the status of the Adaptive Reuse Working Group.

There being no further business to discuss, Mr. Lipsitz adjourned the meeting at 9:57 a.m.

Dated: July 12, 2018

Robert G. Murray, Secretary

Project Matrix/Material Factors/Clawbacks

Count	Project Name	Approval D	Project Amount	Investment	Jobs Retained	Factors		Clawback	Local Labor	Length of Term	Additional Findings	*Incentive Amount	Adaptive Reuse	Pay Equity
						Job Creation	Jobs Created							
1	Shell Fab	Jan-18	\$3,018,000	85% threshold \$ 2,563,300	45	85%-New 8 jobs	10	PILOT Mortgage Sales Tax	YES	Period of PILOT 7 Years	Amendatory	\$424,469		YES
1	Acquest Development	Feb-18	\$1,575,000	85% threshold \$ 1,338,750	25	85%-New 2 jobs	2	Sales Tax	YES	2 years after Termination of Sales Tax		\$65,625		YES
1	Group V (Athenex)	Feb-18	\$1,517,500	85% threshold \$ 1,289,875	55	85%-New 21 jobs	25	PILOT Mortgage Sales Tax	YES	Period of PILOT 10 Years		\$131,063		YES
1	Niagara Label	May-18	\$1,915,000	85% threshold \$ 1,627,750	49	85%-New 4 jobs	5	PILOT Mortgage Sales Tax	YES	Period of PILOT 10 Years		\$284,036		YES
1	ROAR Logistics	Jun-18	\$7,610,000	85% threshold \$ 2,218,500	43	85%-New 12 jobs	14	PILOT Sales Tax	YES	Period of PILOT 7 Years		\$236,500		YES
1	Column Development	Jul-18	\$3,000,000	85% threshold \$ 2,550,000	30	85%-New 6 jobs	8	PILOT Mortgage Sales Tax	YES	Period of PILOT 7 Years		\$323,250		YES
1	Ebenezer Railcar	Jul-18	\$6,000,000	85% threshold \$ 5,100,000	84	85%-New 11 jobs	13	PILOT Sales Tax	YES	Period of PILOT 7 Years		\$897,500		YES
1	Northland II	Jul-18	\$40,967,094	85% threshold \$ 34,822,030	0	85%-New 8 jobs	10	Sales Tax	YES	2 years after Termination of Sales Tax	Amendatory Phase II	\$1,936,686		YES
1	Michigan Broadway	Aug-18	\$6,614,244	85% threshold \$ 5,662,107	3	85%-New 3 jobs	4	Mortgage Sales Tax	YES	2 years after Termination of Sales Tax		\$197,500	Adaptive Reuse	YES
1	Pierce Arrow Kanaka	Aug-18	\$34,535,000	85% threshold \$ 29,354,750	0	85%-New 2 jobs	3	Mortgage Sales Tax	YES	2 years after Termination of Sales Tax		\$1,244,375	Adaptive Reuse	YES
1	Emerson Huron	Aug-18	\$37,919,442	85% threshold \$ 32,231,525	60		0	Mortgage Sales Tax	YES	2 years after Termination of Sales Tax	Amendatory 2017	\$1,975,750	Adaptive Reuse	YES
Count	Project Name	Approval D	Project Amount	Investment	Jobs Retained	Job Creation	Jobs Created	Clawback	Local Labor	Length of Term	Additional Findings	Incentive Amount	Adaptive Reuse	Pay Equity

Adaptive Reuse 2018 Sub Total			\$79,068,686		63		7					\$3,417,625		
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2018 Total			\$139,671,280		394		94					\$7,716,754		
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DRAFT



**Recapture Policy
Material Terms Job Retention Recommendation
August 2, 2018**

Purpose:

The purpose of this memo is to outline a policy proposal to establish a percentage threshold for job retention below the current 100% requirement as a Material Factor. Like job creation, which requires companies meet 85% of their job creation goal, job retention goals likewise need a goal less than the current 100% compliance requirement because of the typical workforce turnover companies experience year to year.

Since the Material Factor was set for job retention in 2013, ECIDA staff has begun to experience instances where companies have had compliance issues with the 100% retention requirement as a result of typical workforce turnover, including employees leaving unexpectedly, end of the year retirements, deaths, etc. With the current requirement at 100%, the unexpected or temporary loss of just one employee can result in a technical default of a company's agreement with the IDA triggering recapture proceedings. Additionally, some companies are experiencing difficulties filling open positions for extended periods leading them to run afoul of their IDA job retention requirement, which the current policy does not account for.

Material Factors/Background:

For each project seeking financial assistance the IDA Board establishes Material Factor(s) which are to be defined and stated in the approving board resolution and project agreements. Material Factors are explicit and measurable and include items such as investment, job creation, retention, or other factors as determined by the board.

Presently the ECIDA sets material factors for job creation and/or job retention for a project. Job creation projects may also have a job retention component, while some projects have a job retention component only. Each is presently handled differently in terms of employment compliance.

Job Creation Projects:

- Job creation projects are required to meet 85% of their job creation goal within two years of project completion, and 100% of their retained jobs goal at project approval for the life of the incentive recapture period.

Job Retention Only Projects:

- Job retention only projects are required to retain 100% of their retained jobs goal at project approval for the life of the incentive recapture period.

Recommendation:

Over the last several years as the Agency has implemented the material factor requirements for employment compliance and monitoring we have found that the 100% threshold job retention

requirement can cause IDA recipients to become non-compliant. This is often due to typical temporary workforce turnover events as outlined above rather than company failure to uphold the agreement. Non-compliance due to natural workforce turnover can lead to companies forfeiting incentives before they are received or losing already received incentives through the recapture process.

The Agency recommends that the 100% employment retention requirement be modified to allow for typical temporary workforce turnover by creating a compliance level at less than 100% of the retained jobs. This new retention goal would be applicable to job creation projects with a retention component as well as job retention only projects for the designated recapture term.

The new policy would only impact companies that experience temporary workforce turnover events, companies that permanently lay off or eliminate jobs would not be subject to the proposed new retention goals, as such permanent job layoffs would trigger the ECIDA "Recapture Policy" and process if the company's employment drops below the 100% job retention goal.

To account for typical workforce turnover and employee movement we propose a two-tiered system to account for the overall size of the workforce and impact of the proposed retention goals. A straight percentage goal for companies of all sizes may cause companies with small workforces to run afoul of a high retention percentage goal, while a low percentage goal could cause companies with large workforces to remain compliant even while having a large number of layoffs. A two-tiered system addresses this concern while still maintaining the overall intent of the retention goal and material factor process.

Proposed Two-Tiered Retention Goal:

1. Companies with employment at application of 150 employees or less would be required to maintain 90% of their retained employment level for the recapture period as set at project approval.
2. Companies with more than 150 employees would be required to maintain 95% of their retained employment level for the recapture period as set at project approval.

Examples of Job Retention Only Projects:

Project	Initial Retention Employment	Retention Goal (%)	Required Retention Employment
Emerson Huron (Adaptive Reuse)	60	90%	54
Upstate Niagara	175	95%	166
Sumitomo	1241	95%	1179

Examples of Job Creation Projects:

Project	Initial Retention Employment	Retention Goal (%)	Required Retention Employment	Creation Goal (2-Year)	Required Creation Employment (85%)	After Year 2 Creation Retention Goal
Pine Pharmaceuticals	15	90%	14	12	10	24
Moog	288	95%	274	42	36	310
Athenex	55	90%	50	25	21	71
First Source	217	90%	206	34	29	235

Board Action:

It is recommended that projects be presented to the Board with job retention goals for Material Factors as follows:

- Companies with employment at application of 150 employees or less would be required to maintain 90% of their retained employment level for the recapture period as set forth at project approval.
- Companies with more than 150 employees would be required to maintain 95% of their retained employment level for the recapture period as set forth at project approval.
- The retention goals stated above would apply to temporary workforce turnover events only and not for permanent job layoffs. Permanent job layoffs would trigger the ECIDA "Recapture Policy" and process if as a result the company's employment drops below the 100% job retention goal.

ECIDA QUARTERLY EMPLOYMENT SURVEY

Project ID Number: _____

Company: _____

Section #1: Employment (only for the location that is receiving IDA benefits):

General Job Classifications:	Number of Full-Time Employees (as of 6/30/18)	Number of Part-Time Employees (as of 6/30/18)	Average annual/hourly salary of full-time employees	Average annual/hourly salary of part-time employees
Manager				
Professional				
Production/Manufacturing				
Clerical/Administrative				
Other Job Classifications (please describe below):				

Only report employees in one category. When you receive it, please forward your NYS-45 Quarterly Combined Withholding, Wage Reporting & Unemployment Insurance Return Form for the quarter ending 6/30/18. Do NOT include Part C (Employee Wage & Withholding Information) or any employee names, social security numbers or wages.

For multi-tenant clients only:

Please provide a copy of your tenant listing and complete the following chart (enclose additional sheets if necessary):

Tenant Name	Number/Estimate of Full-Time Employees	Number/Estimate of Part-Time Employees

Section #2: Certification:

The information furnished on this form is correct to the best of my knowledge according to our records as of June 30, 2018.

Signature: _____

Printed Name: _____

Title: _____

Date: _____ Phone: _____ E-mail: _____

Please complete your survey on or before **Tuesday, July 31, 2018.**

ECIDA QUARTERLY EMPLOYMENT SURVEY

Project ID Number: _____

Company: _____

Section #1: Employment Survey for (only for the location that is receiving IDA benefits):

General Job Classifications:	Number of Full-Time Employees (as of 6/30/18)	Number of Part-Time Employees (as of 6/30/18)	Average annual/hourly salary of full-time employees	Average annual/hourly salary of part-time employees
Manager				
Professional				
Production/Manufacturing				
Clerical/Administrative				
Other Job Classifications (please describe below):				

Only report employees in one category. When you receive it, please forward your NYS-45 Quarterly Combined Withholding, Wage Reporting & Unemployment Insurance Return Form for the quarter ending 6/30/18. Do NOT include Part C (Employee Wage & Withholding Information) or any employee names, social security numbers or wages.

Employment Survey for Multi-Tenant Clients:

Please provide a copy of your tenant listing and complete the following chart (attach additional sheets if necessary):

Tenant Name	Number/Estimate of Full-Time Employees	Number/Estimate of Part-Time Employees

Section #2: Employment Status:

If you are below your employment goals (referenced on your email), please indicate the reasons for the shortfall and explain what efforts you are undertaking to fill those positions. If you are not filling the vacant positions, please indicate why.

Section #3: Certification:

The information furnished on this form is correct to the best of my knowledge according to our records as of June 30, 2018.

Signature: _____

Printed Name: _____

Title: _____

Date: _____ Phone: _____ E-mail: _____

Please complete your survey on or before **Tuesday, July 31, 2018.**