

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

DATE AND PLACE: June 26, 2019, 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, Tyra Johnson, Hon. Brian J. Kulpa, Richard Lipsitz, Jr., Brenda W. McDuffie, John J. Mudie, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz, Sister Denise Roche, Kenneth A. Schoetz, Charles F. Specht and Art Wingerter

EXCUSED: Rev. Mark E. Blue, Hon. Bryon W. Brown, James F. Doherty, Hon. Joseph H. Emminger, Dottie Gallagher, Hon. Howard Johnson, and Hon. Darius G. Pridgen

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

GUESTS: Robert G. Murray, Esq., General Counsel; Maria Whyte, Deputy County Executive; Andrew Federick, Erie County Senior Economic Development Specialist

There being a quorum present at 12:08 p.m., the meeting was called to order by Ms. McDuffie.

MINUTES

The minutes of the May 22, 2019 meeting of the members were presented. Mr. Kulpa moved and Mr. Poloncarz 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 May 2019 financial report, noting that the balance sheet shows that the Agency finished the month with total assets of \$30.7 million and net assets of \$21.7 million. The monthly income statement shows operating income of \$338,000. Operating revenue was over budget by \$335,000, reflecting administrative fees of almost \$492,000 received in May. Operating expenses overall were under budget by \$13,000. After factoring in depreciation, there was a net income of \$327,000 for the month. The year-to-date income statement shows revenues of almost \$1,100,000, being \$55,000 below budget for the year, and expenses of \$1,200,000, being about \$41,000 below budget. These plus special project

grants net to an operating loss of \$45,000 through May. After strategic initiatives and depreciation, there is currently a net loss of \$454,000 for the year.

Mr. Poloncarz noted that the Agency is approaching being on budget.

Ms. McDuffie directed that the report be received and filed.

2019 Tax Incentive Induced/Closing Schedule/Backlog Report. Ms. Fiala presented this report. Ms. McDuffie directed that the report be received and filed.

Approval of Bethlehem Steel BOA Grant Application Resolution. Mr. Poloncarz moved and Sister Denise seconded to approve of the Bethlehem Steel BOA Grant Application Resolution. Ms. McDuffie noted that she would abstain from voting due to her role as a board member on the REDC.

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

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE SUBMISSION OF A FUNDING APPLICATION TO THE NEW YORK STATE DEPARTMENT OF STATE BROWNFIELD OPPORTUNITY AREA PROGRAM TO SUPPORT PREDEVELOPMENT ACTIVITIES WITHIN THE CITY OF LACKAWANNA FIRST WARD BROWNFIELD OPPORTUNITY AREA

Policy Committee Update. Mr. Lipsitz updated members on the most recently completed Policy Committee meeting and noted that the Committee reviewed and recommends the Michigan-Seneca Group project, the Buffalo Material Handling project, the 201 Ellicott project and the Fedder Lofts project for approval to be presented to the IDA board members at this meeting. The Committee also made recapture recommendations for Fisher Price to be discussed and ultimately determined by IDA board members at today's meeting. Ms. McDuffie directed that the report be received and filed.

INDUCEMENT RESOLUTIONS

201 Ellicott, LLC & Ellicott Green Acres, LLC (d/b/a Braymiller Market), 201/203 Ellicott Street, Buffalo, New York. Ms. McDuffie reported that the Company asked that this project be removed from the Agenda for today's meeting.

Buffalo Material Handling, 125 Taylor Drive, Depew, New York. Ms. Fiala reviewed this proposed sales tax, mortgage recording tax and real property tax abatement benefits project involving the construction of a 10,000 sq. ft. addition to the existing facility which will allow the company to increase productivity and ease workflow.

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 modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as

described below, submit, on an annual basis or as otherwise indicated below, through 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 \$1,117,750.00 (which represents the product of 85% multiplied by \$1,315,000.00, 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 32 FTE employees [representing the sum of the Baseline FTE plus 2 (being the product of 85% multiplied by 3, 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.

General discussion followed. Sister Denise moved and Mr. Wingerter seconded to approve 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 125 TAYLOR 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, (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 PROJECT AGREEMENT, AND RELATED DOCUMENTS

Fedder Lofts, LLC, 57 & 71 Tonawanda Street, Buffalo, New York. Ms. Fiala reviewed this proposed sales tax and mortgage recording tax benefits project involving both a historic renovation and a brownfield cleanup project. The company proposes to adaptively re-use the 130,000 sq. ft. structure to provide a mixed use project consisting of 85 “naturally occurring” affordable living units and 20,000 sq. ft. devoted to a mini storage complex.

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 modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below through the conclusion of the later of two (2) 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 \$21,866,250.00 (which represents the product of 85% multiplied by \$25,725,000.00, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – 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 2 FTE employees (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.

General discussion followed. Mr. Lipstiz moved and Mr. Nellis seconded to approve 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 FEDDER LOFTS, 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

COMPLIANCE

Fisher Price Recapture. Mr. Cappellino reviewed the Fisher Price project and ECIDA financial assistance provided to Fisher Price related to its June 2014 project and its recent employment shortfall history resulting in a violation of the required material terms and conditions that Fisher Price obligated itself to maintain as a condition of receiving ECIDA financial assistance. Mr. Cappellino reviewed three staff proposed options presented to the Policy Committee as a means by which to recapture financial assistance. Mr. Cappellino noted that the Policy Committee reviewed the proposed options and allowed Fisher Price to speak at the Policy Committee meeting. The Policy Committee chose Option #2 unanimously which

called for a pro-rata recapture based on the percentage of employment shortfall. Mr. Wingerter moved and Mr. Nellis seconded to approve of Option #2 which is a pro-rata recapture based on employment shortfall. Ms. McDuffie then called for the vote and the motion was unanimously approved.

MANAGEMENT TEAM REPORTS

Mr. Weathers introduced Daryl Spulecki as the new RDC loan officer.

Mr. Weathers gave the Members an update on New York State proposals to require the payment of prevailing wages for all projects receiving IDA financial assistance, noting that the prevailing wage bill did not pass at the conclusion of last week's legislative session.

Mr. Weathers then asked Board members to enter into an attorney-client privilege discussion to seek legal advice. Mr. Poloncarz moved and Sister Denise seconded to enter into an attorney-client privilege session. Ms. McDuffie called for the vote, which was unanimously carried, and the Agency entered into an attorney-client privilege meeting at 12.29 p.m.

Sister Denise moved and Mr. Specht seconded to conclude the attorney-client privilege session, Ms. McDuffie called for the vote, and the attorney-client privilege session was terminated at 12:45 p.m.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 12:45 p.m.

Dated: June 26, 2019



Karen M. Fiala, Secretary