

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

DATE AND PLACE: January 27, 2016, at the Erie County Industrial Development Agency, 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203

PRESENT: Hon. Diane Benczkowski, James F. Doherty, Dennis Elsenbeck, Hon. Joseph H. Emminger, Dottie Gallagher-Cohen, Hon. Betty Jean Grant, Chris Johnston, Brenda W. McDuffie, Dr. Carol Nowak, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen, and David J. State

EXCUSED: Hon. Byron W. Brown, Richard Lipsitz, Jr., Frank B. Mesiah, John J. Mudie, Hon. Glenn R. Nellis, Hon. Edward A. Rath, III and Hon. Barry A. Weinstein

OTHERS PRESENT: Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Andrew Schoepich, Treasurer; Karen M. Fiala, Assistant Treasurer; Mollie Profic, Assistant Treasurer; Gerald Manhard, Loan Manager; and Robert G. Murray, Secretary

There being a quorum present at 11:05 a.m., the meeting of the members of the Erie County Industrial Development Agency was called to order by Ms. McDuffie.

At this point in time, Ms. McDuffie noted that this would be the last meeting to be attended by Ms. Grant and Ms. McDuffie thanked Ms. Grant for her participation and good work.

Ms. McDuffie then introduced Ms. Benczkowski and Mr. Emminger as new members by virtue of Ms. Benczkowski being the new supervisor of the Town of Cheektowaga and Mr. Emminger being the new supervisor of the Town of Tonawanda.

MINUTES

The minutes of the December 16, 2015 Meeting of the Members were presented. Upon motion made by Mr. Poloncarz, and seconded by Mr. Johnston, the minutes were unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Gemcor. Mr. Weathers reviewed the request for the Agency to vote on the sale of substantially all of the assets of Gemcor II, LLC. Mr. Weathers reviewed the history of the Agency's acquisition of its 33-1/3% membership interest in Gemcor including the 2009 conveyance of the Gemcor membership interest from the Buffalo and Erie County Industrial Land Development Corporation to the Erie County Industrial Development Agency for tax

planning purposes upon the recommendation of Harris Beach which resulted in a refund of approximately \$3 million dollars of income taxes and to date, the receipt of a total of \$9 million dollars in tax free income. Mr. Weathers noted that the members of the Agency, in Executive Session on December 16, 2015, were given a briefing on the pending sale of Gemcor's assets. Mr. Weathers noted that the Agency has complied with the New York State Public Authorities Law and provided the required 90-day notice of disposition to the New York State Authority Budget Office with respect to the assets of Gemcor. Mr. Weathers noted that the Agency's portion of the purchase price is approximately \$9,750,000 which exceeds the appraisal value of \$4.4 to \$9.6 million dollars based on appraisals maintained within the Agency's records. It was noted that the total purchase price is \$44 million dollars. In an effort to retain jobs, payroll and benefits of Gemcor employees, Mr. Weathers noted that the Agency will be entering into an agreement with the buyer for a period of no less than 10 years over which time approximately \$1 million dollars will be made available as a purchase price adjustment for the benefit of buyer or seller depending on whether or not the buyer maintains the jobs and payroll and benefits. Mr. Weathers explained that at the conclusion of the first 5 years following the sale, should the Agency determine that the buyer has retained 85% of the current workforce (75 jobs) with no short fall of wages or benefits, then the Agency would adjust the purchase price by \$500,000, releasing such amount from the escrow account established to insure job retention. In each subsequent years 6-10, should the buyer continue to maintain employment, wages and benefits, the Agency would approve additional purchase price adjustments of \$100,000 for each year 6-10. The Agency will monitor jobs, wages and benefits on a quarterly basis and should the Agency determine that the buyer has not maintained the required level of jobs, wages and benefits, the retained purchase price adjustment amount would be returned to the Agency.

Mr. Weathers then noted that the Agency typically received approximately \$750,000 a year of revenue from its investment in Gemcor and, after the sale, the Agency will no longer receive any annual revenue from Gemcor. In sum, Mr. Weathers commented that the balance sheet cash position will increase, however, the Agency will need to amend its budget to reflect the loss of anticipated revenue of \$750,000 on an annual basis.

Mr. Johnston asked Mr. Schoepich whether the sale proceeds would go into the UDAG fund or the Agency's general fund. Mr. Schoepich responded that the proceeds will go into the UDAG fund.

Ms. McDuffie then commended Agency staff and the County Executive for negotiating to maintain the jobs within Erie County and expressed her support for the sale of the assets.

Mr. Poloncarz moved to approve of the sale of the assets of Gemcor. Mr. Poloncarz then thanked Mr. Weathers, Mr. Cappellino, Mr. Schoepich and Mr. Murray for their good work in negotiating a solution to the sale that maintains jobs and salaries and to insure that the new out-of-state owners do not otherwise purchase the assets and move the jobs out of Erie County.

Mr. Doherty seconded the motion.

Mr. Weathers commented that job monitoring will be undertaken on a quarterly basis and the Agency staff will be working with the new owners to insure that any future investments by the company are made in Erie County.

At this point in time, Ms. McDuffie called for the vote and the following resolution was unanimously approved:

**RESOLUTION APPROVING THE SALE OF SUBSTANTIALLY ALL OF
THE ASSETS OF GEMCOR II, LLC TO ASCENT AEROSPACE**

2015 Tax Incentive Induced/Closing Schedule/Estimated Real Property Tax Impact. Ms. Fiala presented this report. Mr. Poloncarz commented that due to the Real Property Tax Cap, the City and County are prohibited from taking advantage of the increased tax growth resulting from new investment within Erie County. There being no further comments, Ms. McDuffie directed that the report be received and filed.

RDC Loan Status Report. Mr. Manhard presented this report. Mr. Pridgen thanked the Agency staff for reaching out to MWBE businesses and encouraged the Agency staff to continue their marketing and outreach efforts to MWBE businesses going forward. Mr. Weathers commented that the Agency is actively seeking small businesses for lending opportunities and commented that the Agency has recently partnered with the Amherst Chamber of Commerce to find small business lending opportunities and is looking for other partnerships going forward. There being no further comments, Ms. McDuffie directed that the report be received and filed.

Policy Committee Update. Mr. Cappellino provided members with an update on the most recently completed Policy Committee meeting, noting that the Policy Committee has approved the two projects that will be presented to the Board at today's meeting. Mr. Cappellino also commented that the Policy Committee had good discussion in regard to 2016 Agenda Items/Work Plan and noted that this conversation will continue at the next meeting. Ms. McDuffie noted that the Policy Committee is working to insure its agenda items are consistent with the Regional Economic Development Council strategy, the One Region Forward strategy and best practice IDA strategies. There being no further discussion, Ms. McDuffie directed that the report be received and filed.

BETHLEHEM STEEL RAIL RELOCATION PROJECT

Mr. Cappellino reviewed prior Agency involvement with the County of Erie and its role in providing oversight and project administration for engineering and construction services related to reconstruction of rail facilities on the former Bethlehem Steel site in Lackawanna, New York. Mr. Cappellino explained that the Agency is being asked to approve a resolution authorizing the Agency to enter into an agreement with the County of Erie for the next phase of redevelopment on the site for the purpose of managing and procuring design, engineering and site preparation for construction related to railroad work at the Bethlehem Steel site and noted that the project is being funded through a New York State Multi-Modal I Program Grant provided to Erie County in the amount not to exceed \$342,428.79.

Mr. Poloncarz noted that he will abstain from voting on and discussing this item because as County Executive, he will be required to sign the related contract between the County and the Agency and as such stated that he believes he has a conflict of interest related to this item.

Ms. Gallagher-Cohen moved, and Mr. Elsenbeck seconded to approve of the agreement and relationship as proposed. Ms. McDuffie then called for a vote and the following resolution was unanimously approved, with Mr. Poloncarz abstaining:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT
AGENCY AUTHORIZING THE AGENCY TO ENTER INTO CONTRACTS
WITH THE COUNTY OF ERIE AND/OR THE NYSDOT, OTHER STATE
AND FEDERAL AGENCIES, AND APPROPRIATE CONSULTANT(S), IN
AMOUNTS NOT TO EXCEED A TOTAL OF \$342,428.79, FOR THE
PURPOSE OF DESIGN, ENGINEERING AND SITE PREPARATION FOR
CONSTRUCTION RELATED TO RAILROAD WORK ON THE FORMER
BETHLEHEM STEEL SITE

INDUCEMENT RESOLUTIONS

Alt Store, LLC, 1959 Elmwood Avenue, Buffalo, New York. Ms. Fiala reviewed this proposed sales tax exemption benefit only project involving the rehabilitation of a former vacant Office Depot building including the renovation of the existing 30,000 sq. ft. facility itself, and the construction of a 10,000 sq. ft. addition thereto.

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 recapture of state and local sales and use tax exemption benefits, submit on an annual basis or as otherwise indicated below, through the conclusion of the later of either two years following: (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 \$5,865,000 (which represents the product of 85% multiplied by \$6,900,000, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment - that the Company has created and maintained full-time equivalent (“FTE”) employment at the Facility equal to 27 FTE employees [the product of 85% multiplied by 32 (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)].
- (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.

Mr. Pridgen moved and Ms. Benczkowski seconded to approve of the project. Ms. McDuffie called for the vote and the following resolutions were unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT ACTION TO UNDERTAKE THE ALT STORE 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 ALT STORE, LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF 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 SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE CONSTRUCTION AND/OR RENOVATION, UPGRADING, AND EQUIPPING OF THE PROJECT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN AGENT AND FINANCIAL ASSISTANCE AGREEMENT AND RELATED DOCUMENTS

At this point in time, Mr. Elsenbeck and Ms. Gallagher-Cohen left the meeting.

Triad Recycling, 3701 River Road, Tonawanda, New York. Mr. Cappellino reviewed this proposed sales tax, mortgage recording tax and real property tax exemption benefit project involving the repair and renovation of two existing buildings and the construction of a new 4,000 sq. ft. facility adjacent to the company's existing operations, all located in Tonawanda, New York to support the company's recycling activities.

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 recapture of state and local sales and use tax exemption benefits, mortgage recording tax exemption benefits, and real property tax exemption benefits, 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 \$2,544,050.00 (which represents the product of 85% multiplied by \$2,993,000.00, being the total project cost as stated in the Company's application for Financial Assistance).

- (ii) Employment Commitment – that the Company has maintained and created full-time equivalent (“FTE”) employment at the Facility equal to two (2) FTE employees [representing 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)].
- (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.

Mr. Emminger then spoke in favor of the project and thanked the company for its continued investment within the Town of Tonawanda, New York. Mr. Emminger then moved to approve of the project. Mr. State seconded the motion. Ms. McDuffie called for the vote and the following resolutions were unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT ACTION TO UNDERTAKE THE 3755 RIVER ROAD, 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 3755 RIVER ROAD, 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) 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, RENOVATION, UPGRADING 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 AGREEMENT, AND RELATED DOCUMENTS

TENANT RESOLUTION

50 Cobham LLC, NeuroproteXeon, Krog Development. Ms. Fiala reviewed a 2006 ECIDA project wherein the Agency entered into a Lease/Leaseback Agreement with 50 Cobham LLC. The terms of the Leaseback Agreement require the Agency to consent to subtenants occupying the facility. Ms. Fiala explained that the subtenant, NeuroproteXeon, is a late clinical stage pharmaceutical company established in England, new to the area and currently has 8 employees and hopes to increase that number to 22 employees within the next two years. No additional benefits are being requested or provided. Mr. Johnston moved and Mr. Poloncarz seconded to approve of the subleasing of space to NeuroproteXeon. Ms. McDuffie called for the vote and the following resolution was unanimously approved:

RESOLVED THAT THE APPROVAL OF THE SUBLEASE OF SPACE TO NEUROPROTEXEON AT 50 COBHAM DRIVE, ORCHARD PARK, NEW YORK, IS HEREBY APPROVED

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

MANAGEMENT TEAM REPORTS

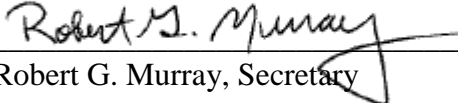
Pay Equity Audit. Mr. Weathers informed the Board that the Agency is undertaking a “test run” of the Pay Equity Policy and to that end, the Agency is auditing itself and running through all of the processes and procedures related to an actual pay equity audit in an effort to work any “bugs” out before it is utilized on an actual IDA project.

Legal RFP Update. Mr. Weathers provided an update on the legal request for proposals process, stating that the process was initiated in July, 2015 and had run its course through the required Governance Committee meeting and subsequent to that required Governance Committee meeting, the Governance Committee held three additional sessions to review the RFP process whereat a total of 13 board members attended at least one of the three sessions, and also whereat the question of whether the Agency should retain in-house counsel was also discussed. Mr. Weathers also commented that the New York State Authority Budget Office is undertaking a procurement audit of the Agency’s legal services and auditing services contracts and therefore Mr. Weathers stated that he would like to hold off the RFP process until the audit is completed.

Foreign Trade Zone Application. Mr. Weathers provided members with an update of a recent Foreign Trade Zone designation request made on behalf of Cummings Inc.

There being no further business to discuss, upon motion made by Mr. Pridgen and seconded by Mr. Doherty, the meeting was adjourned at 12:05 p.m.

Dated: January 27, 2016


Robert G. Murray, Secretary