

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

DATE AND PLACE: October 26, 2016, at the Erie County Industrial Development Agency, 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203

PRESENT: Hon. Diane Benczkowski, Hon. Joseph H. Emminger, Dottie Gallagher-Cohen, Richard Lipsitz, Jr., David L. Lowrey, Brenda W. McDuffie, Frank B. Messiah, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen, Hon. Edward A. Rath, III, Sister Denise Roche, Paul V. Vukelic and Hon. Barry A. Weinstein

EXCUSED: Hon. Byron W. Brown, James F. Doherty, John J. Mudie, and Louis Panzica

OTHERS PRESENT: Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President, Mollie Profic, Treasurer; Karen M. Fiala, Assistant Treasurer; Bradley Bach, Assistant Treasurer; and Robert G. Murray, Secretary

GUESTS: Andrew Federick, Erie County Senior Economic Development Specialist

There being a quorum present at 11:13 a.m., the meeting of the members of the Erie County Industrial Development Agency was called to order by its Chair, Ms. McDuffie.

MINUTES

The minutes of the September 28, 2016 Meeting of the Members were presented. Mr. Rath moved and Ms. Benczkowski seconded to approve of the minutes. Ms. McDuffie called for the vote and the minutes were unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic presented the financial statements for September 2016 noting the balance sheet shows that the Agency ended September with total assets of approximately \$31.5 million and net assets of approximately \$27.8 million. The monthly income statement shows an overall net loss of \$127,000 for September. Operating revenue was below budget by about \$174,000 due to the timing of receipt of administrative fees and the loss of GEMCOR income. Operating revenues were also below budget by about \$50,000 due to lower than expected actual salaries and professional services fees. The year-to-date income statement shows total operating revenue of \$1.8 million and total operating expenses of \$2.3 million. The

year-to-date operating revenues are behind budget by approximately \$600,000 and operating expenses are below budget by \$91,000. Net income year-to-date is approximately \$4.2 million when taking into account special project grants, depreciation, and non-recurring items. General discussion ensued. Ms. McDuffie then directed that the report be received and filed.

Credit Card Authorization. Ms. Profic presented a request for authorization of a credit card from KeyBank. Ms. Profic noted that with the acquisition of First Niagara Bank, KeyBank is requiring all of their customers that are public entities to have their governing bodies approve of KeyBank's standard credit card certification. Ms. Profic noted that the terms of the credit card account are not changing and the Agency will not be incurring any additional fees because of this change.

Mr. Weinstein moved and Mr. Emminger seconded to approve of the following resolution:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE ACQUISITION BY THE AGENCY OF A CREDIT CARD CONSISTENT WITH THE AGENCY'S CREDIT CARD POLICY

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

2016 Tax Incentive Induced/Closing Schedule/Backlog Report. Ms. Fiala presented this report. There being no questions, Ms. McDuffie directed that the report be received and filed.

EDA Amendment for RDC Loan Funds. Ms. Profic summarized the several steps already taken by the ILDC and the RDC to resolve the RDC Revolving Loan Fund local share issue and reviewed the steps needed to be taken by the Agency to allow a portion of a fee related to the ILDC's issuance of the Buffalo Niagara Medical Campus project bonds to remain with the ILDC instead of being transferred to the Agency. Ms. Profic noted that the remaining amount of Buffalo Niagara Medical Campus administrative fee revenue will be transferred by the ILDC to the RDC for placement into the RLF.

Mr. Weinstein moved and Mr. Emminger seconded to approve of the following resolution:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING RECEIPT OF A CERTAIN PAYMENT FROM THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (THE "ILDC") PURSUANT TO A SHARED SERVICES AGREEMENT BY AND BETWEEN THE AGENCY AND THE ILDC

Ms. McDuffie called for the vote and the aforementioned resolution was unanimously approved.

Grant from DOT for County Railroad. Mr. Cappellino reviewed for members that the Agency leases certain railroad properties in Erie County from Erie County and noted that the railroad properties are in need of certain repairs and rehabilitation. The Agency has received a grant from the New York State Department of Transportation (“DOT”) in the amount of \$2,400,000 and as a condition precedent to receiving the grant, the DOT requires that the Agency approve of the acceptance of the grant funds. Ms. Gallagher-Cohen moved and Mr. Nellis seconded to approve of the following resolution:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT
AGENCY AUTHORIZING THE EXECUTION AND DELIVERY OF A
GRANT AGREEMENT FOR THE DESIGN, CONSTRUCTION,
RECONSTRUCTION, IMPROVEMENT AND REHABILITATION OF
CERTAIN ERIE COUNTY RAILROAD FACILITIES

Ms. McDuffie called for the vote and the aforementioned resolution was unanimously approved.

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

Policy Committee Update. Mr. Lipsitz stated that there was no quorum present at the most recently scheduled Policy Committee meeting and therefore no meeting of the Policy Committee was held.

INDUCEMENT RESOLUTIONS

Iroquois Bar Corp., 155 Commerce Drive, Lackawanna, New York. Ms. Fiala reviewed this proposed sales tax exemption, mortgage recording tax exemption, and real property tax abatement benefits project involving the construction of a 13,600 sq. ft. addition to the company’s fabrication, warehouse and maintenance areas.

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 term 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 \$782,000.00 (which represents the product of 85% multiplied by \$920,000.00, being the total project cost as stated in the Company’s application for Financial Assistance)
- (ii) Employment Commitment – that there are at least sixty-five (65) 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 sixty-seven (67) FTE employees [representing the sum of sixty-five (65) Baseline FTE plus two (2) the product of 85% multiplied by two (2) (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 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 ensued. Mr. Poloncarz moved and Mr. Rath 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 IROQUOIS BAR CORP. PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF IROQUOIS BAR CORP., 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

Rosina Food Products, Inc., 190 Industrial Parkway, Cheektowaga, New York. Mr. Cappellino reviewed this proposed sales tax exemption and real property tax abatement benefits project involving the renovation of approximately 10,000 sq. ft. of existing space to consolidate customer service, supply chain, research and development and sales and marketing activities and to include construction of a test kitchen for corporate chefs to prepare and present cooked samples and hosting key customers in the new hospitality suite.

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 term 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 \$1,312,400.00 (which represents the product of 85% multiplied by \$1,544,000.00, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least Two Hundred Seventeen (217) 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 Two Hundred Twenty (220) FTE employees [representing the sum of 217 Baseline FTE plus three (3) the product of 85% multiplied by four (4) (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 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. Pridgen noted that the company is a great partner in its employment efforts particularly related to certain sectors of the employment market that are difficult to employ. Ms. McDuffie also thanked Rosina Foods for their proactive employment efforts.

Mr. Weinstein moved and Mr. Emminger 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 ROSINA FOOD PRODUCTS, INC. PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF ROSINA FOOD PRODUCTS, 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) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (iii) 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 (iv) 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 REPORTS

Mr. Weathers encouraged members to attend a meeting on November 10, 2016, with the Town of Tonawanda to help the Town develop an economic development action plan.

Mr. Weathers then provided members with a power point presentation on the Not-For-Profit Campus Concept and stated that he is looking to members to confirm if they desire the Agency to continue to pursue this concept. Mr. Weathers then reviewed the mission of a Not-For-Profit Campus Concept and also stated a concern that such an initiative must produce positive net income. General discussion ensued. Mr. Rath expressed a concern that the Agency was entering into “developer” territory. Mr. Poloncarz noted that the Agency has lost a source

of revenue, being the GEMCOR revenue and noted that the Not-For-Profit Campus Concept could replenish revenue lost by GEMCOR to help the Agency sustain itself. Mr. Poloncarz then reminded members that the Agency is already leasing space at its former headquarters located at 143 Genesee Street.

Mr. Rath questioned the cost of such facility. Mr. Weathers stated that no such costs have been identified yet but he is looking to see if the Board is okay with the concept in general, and then the Agency could look into the cost of the building and related tenant rental income. Mr. Rath expressed concern that the Agency will spend significant dollars to acquire a building and that this is, overall, an expensive proposal.

Mr. Pridgen questioned if there is a building right now being looked at. Mr. Weathers stated that this is a concept only. Mr. Pridgen then responded that he hopes that sustainability comes out of the mission, and stated his concern that the mission must come first, such that if this concept is important to the mission then it is sustainable and hopes the Agency isn't doing this just to make money and retain staff. Mr. Weathers responded that the mission of the Agency is to improve the quality of life within Erie County and that this concept is within such a mission.

Ms. Gallagher-Cohen confirmed Mr. Pridgen's statement in that the Agency shouldn't just undertake this initiative to make money. Ms. Gallagher-Cohen stated that the Agency needs to be strategic in what it is doing here and cannot overtax staff that should be spending time on projects that create jobs. She commended Mr. Weathers for taking a step back to strategically discuss the Not-For-Profit Campus Concept.

Mr. Lipsitz expressed his belief that the Not-For-Profit Campus Concept is consistent with general IDA legislation and statutory IDA purposes but also stated that just because it's legal, doesn't mean it should be done. Mr. Lipsitz noted this concept has been discussed for years and recalled that County Clerk Jacobs and Congresswoman Slaughter have also proposed a similar concept in the past.

Mr. Pridgen stated that he wanted to be clear that he is not for or against this concept, but that this concept must be mission based, not just used for new revenue purposes.

Mr. Weathers noted that the concept for tenants would be tenants that provide social services including those that help families and individuals so if the Agency is able to help a not-for-profit to achieve its mission, then the Agency would then also be helping those clients obtain jobs and also assist in alleviating poverty.

Mr. Rath thanked Mr. Weathers for discussing the Not-For-Profit Campus Concept as opposed to a specific building related thereto, and stated it is important that the Agency actions taken in this regard are consistent with the Agency's mission.

Mr. Vukelic stated that he supports the concept, agrees the concept should support the mission, but stated that he will be looking at the numbers should this go forward and also stated that the Agency would need to identify a certain threshold of tolerance, for example, producing \$20,000 of profit would not be good enough.

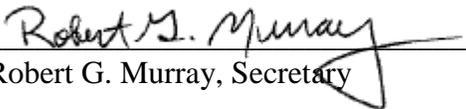
Ms. McDuffie thanked members for their great discussion.

Property Acquisition. Ms. McDuffie asked for a motion to enter into Executive Session to discuss a potential purchase of real property, the disclosure of which could substantially affect the value thereof. Mr. Rath moved and Mr. Nellis seconded to enter into Executive Session. At 12:18 p.m. the Agency entered into Executive Session.

During the Executive Session, several members left the meeting such that a quorum was no longer at hand. At 1:21 p.m., Ms. McDuffie terminated Executive Session.

There being no further business to discuss, Ms. McDuffie adjourned the meeting at 1:21 p.m.

Dated: October 26, 2016


Robert G. Murray, Secretary