

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

**DATE AND PLACE:** December 21, 2016, at the Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor ESD Conference Room, Buffalo, New York 14203

**PRESENT:** Rev. Mark E. Blue, Hon. Byron W. Brown, James F. Doherty, Hon. Joseph H. Emminger, Dottie Gallagher-Cohen, Richard Lipsitz, Jr., David L. Lowrey, John J. Mudie, Hon. Glenn R. Nellis, Louis Panzica, Hon. Mark C. Poloncarz, and Hon. Edward A. Rath, III

**EXCUSED:** Hon. Diane Benczkowski, Brenda W. McDuffie, Hon. Darius G. Pridgen, Sister Denise Roche, Paul V. Vukelic and Hon. Barry A. Weinstein

**OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President, Mollie Profic, Treasurer; Gerald Manhard, Chief Lending Officer; Michael Alexander, Assistant Treasurer; Dawn Boudreau, Compliance Officer; Phil Riggs, Rail & Site Management; and Robert G. Murray, Secretary

**GUESTS:** Maria Whyte, Erie County Deputy County Executive; Andrew Federick, Erie County Senior Economic Development Specialist; Brian Mabry, on behalf of Flexo Transparent, LLC.

At 11:03 a.m., in the absence of the quorum, Mr. Lipsitz determined to review information items only with those Board members present.

**MANAGEMENT TEAM REPORTS**

Mr. Weathers provided members with the 2017 ECIDA Board meeting schedule.

ECIDA Compliance Update. Ms. Boudreau presented a PowerPoint presentation to ECIDA Board members reviewing 2016 compliance initiatives and efforts undertaken by Agency staff related thereto. Ms. Boudreau reviewed the number of companies subject to potential ECIDA recapture actions, provided a summary of companies that are in and out of compliance with respect to adherence to material terms and conditions, reviewed reporting requirements related to material term compliance, reviewed the status of the four companies that were subject to a recapture event and discussed issues related thereto, and then reviewed various sales tax overage issues and collection activities related thereto.

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

Mr. Lipsitz then, at 11:08 a.m., there now being a quorum present, called the meeting of the members of the Erie County Industrial Development Agency to order.

Ms. Boudreau then reviewed the local labor requirements and compliance issues related thereto. Ms. Boudreau informed members that Agency staff holds periodically compliance meetings with ECIDA clients to review all reporting requirements and processes related thereto. In addition, Ms. Boudreau noted that Agency staff meets with municipalities to review PILOT billings and processes, that staff will continue to meet with clients and municipalities on a going forward basis, noted that she is responsible for confirming board member compliance with ABO reporting and board training requirements, and last, Ms. Boudreau reminded members of their board training requirements. There being no further discussion, Mr. Lipsitz directed that the report be received and filed.

Welcome New Board Member. Mr. Lipsitz next recognized Mr. Mesiah, noted that Mr. Mesiah has retired as President of the Buffalo Branch of the National Association for the Advancement of Colored People (NAACP) and as such, has retired, as the longest serving current member of the ECIDA, after 18 years of service. Mr. Lipsitz noted that Frank Mesiah retired as a regional administrator in the Division of Equal Opportunity Development of the New York State Department of Labor. Currently, Mr. Mesiah conducts workshops on sexual harassment prevention, managing diversity, the Americans with Disabilities Act, and equal employment opportunity/affirmative action programs. Mr. Mesiah worked for several years as a part-time instructor at Canisius College, recently teaching a graduate course in managing diversity, and part-time with Cornell University Buffalo Labor Studies program, teaching managing diversity, sexual harassment prevention, and equal employment opportunity/affirmative action courses. Mr. Mesiah is also the host of “The NAACP Speaks” every other Thursday from 11 a.m. to Noon on Radio Station WUFO 1080 AM.

Mr. Lipsitz commented that Mr. Mesiah has extensive community service in addition to his work with the local and state NAACP as he also serves in the following capacities: “Board Member of the Afro-American Historical Association of the Niagara Frontier, Secretary to the Black Leadership Forum, Member of the Board of Managers of the Buffalo and Erie County Historical Society, Board Member of the Buffalo Economic Renaissance Corporation, Board Member of Health Now, Inc., Board Member of Legal Aid of Buffalo, Board Member of the Greater Buffalo YMCA, Member of the Near Eastside Health Taskforce, Member of Project Exile (Good Neighbors), and Board Member of FBI Citizens Academy Foundation.

Mr. Lipsitz reviewed Mr. Mesiah’s long history of accomplishments particularly in the on-going struggle of bigotry and prejudice and for positive economic development that advances the living standards of all residents of Western New York. Mr. Lipsitz concluded by recognizing Mr. Mesiah’s valuable voice of conscience on the Board of the ECIDA and asked fellow Board Members to join him in wishing Mr. Mesiah the very best.

At this point in time, members of the IDA, and all present at the meeting stood and applauded Mr. Mesiah’s excellent service.

Mr. Lipsitz then introduced Rev. Mark Blue as the new President of the Buffalo Branch of the NAACP, noting that Rev. Blue is a thoughtful man of integrity who will be an important voice of conscience on this Board for many years to come.

## MINUTES

The minutes of the November 30, 2016 Meeting of the Members were presented. Mr. Nellis moved and Mr. Rath seconded to approve of the minutes. Mr. Lipsitz called for the vote and the minutes were unanimously approved.

## REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic presented the financial statements for November 2016 noting the balance sheet shows that the Agency ended November with total assets of approximately \$31.3 million and net assets of approximately \$27.5 million. The monthly income statement shows an overall net loss of \$60,000 for November. Operating revenue exceeded budget by about \$7,500 due to administrative fees received in excess of the monthly budgeted amount. Total operating expenses were below budget by \$17,000 due mainly to lower than expected professional service fees and salaries. The year-to-date income statement shows total operating revenues of approximately \$2.1 million and total operating expenses of \$2.8 million. The year-to-date operating revenues are behind budget by approximately \$207,000 and operating expenses are below budget by \$93,000. Net income year-to-date is approximately \$3.9 million when taking into account special grants, depreciation, and non-recurring items. There being no further discussion, Mr. Lipsitz directed that the report be received and filed.

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

Board Annual Certification of the RDC Revolving Loan Fund (RLF). Ms. Profic reviewed the proposed resolution regarding the Agency's annual certification of the RDC Revolving Loan Fund, along with the summary of a recently completed compliance review report. Ms. Profic explained that as part of the Agency's reporting to the Economic Development Administration (EDA), the Agency must annually certify that the RLF is being operated in compliance with EDA requirements and in accordance with the policies and procedures set forth in the Agency's Loan Administration Plan. To accomplish this and provide additional assurance, the Agency voluntarily engages an outside firm to perform a review every two years. It is important to note that none of the issues mentioned in the report are in violation of EDA requirements or any laws or public policies and are also typical issues for both private and public lenders. Ms. Profic commented that reviews like this also give staff an opportunity to receive outside input and improve current procedures. One example that has already been put into practice is having the CEO send a request for financial documents in order to garner special attention. Ms. Profic also emphasized that the comments in the report have to do with post-closing documentation collection, not the collection of documents before a loan is approved or closed. Also, Ms. Profic commented that the loans reviewed are current on principal and interest payments.

There being no further discussion, Mr. Emminger moved and Mr. Mudie seconded to provide the required certification, Mr. Lipsitz called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY (THE "RLF BOARD" OR "AGENCY") IN CONNECTION WITH

AN ANNUAL CERTIFICATION TO BE MADE UNDER THE STANDARD TERMS AND CONDITIONS AND ADMINISTRATIVE MANUAL REQUIREMENTS OF THE ECONOMIC DEVELOPMENT ADMINISTRATION (THE "EDA")

2016 Tax Incentive Induced/Closing Schedule/Backlog Report. Mr. Cappellino presented this report. General discussion ensued. Ms. Gallagher-Cohen noted that per the 10 year look back table, the number of projects in 2016 is 13 but the 10 year average is 27, so she expressed her concern that the number of deals is less than half of the average number of deals undertaken during the previous 10 years, noted the Agency has an operating deficit, and stated that this begs the question as to why there are less projects and expressed a concern that revenue shortfalls could affect future budgets and staff headcount.

Mr. Weathers commented that the Agency uses a non-predictive revenue model, such that there is no correlation between the number of deals and revenues received, so it is difficult to budget future revenues and future administrative fees.

Ms. Gallagher-Cohen stated that the area is experiencing an upswing in the economy and that the Agency should, related thereto, be doing more deals.

Mr. Lipsitz stated his position that perhaps companies are choosing not to seek Agency incentives.

Mr. Weathers stated that other difficulties affect Agency revenues that are out of IDA control, as experienced by the recent Trico deal that did not close.

Ms. Gallagher-Cohen reiterated her concern that the Agency is at a low point for the number of deals undertaken.

Mr. Poloncarz stated his belief that the Agency should not be chasing deals for fees and that it needs to be concerned about the quality of deals and not the number of deals and stated his conclusion that there are now a number of companies in Erie County that are making investments here without incentives and if this is the case, we should be glad that investment is occurring without taxpayers providing incentives. Mr. Poloncarz suggested that perhaps the area is reaching a stage when developers are now moving forward without needing IDA benefits and if so, this is a positive situation that companies can produce a return on investment without seeking taxpayer subsidy.

Mr. Rath expressed his agreement with Ms. Gallagher-Cohen's concerns and asked Mr. Weathers to provide more information with respect to the number of deals and breakout the data by industry segment so that the Agency can analyze trends regarding which businesses are participating, and which are not participating, with the Agency. Mr. Rath asked if the 10-year look back can also be reviewed to consider an industry segment analysis.

Mr. Weathers agreed that the data should be dissected to identify trends.

Mr. Brown expressed his agreement with Ms. Gallagher-Cohen, Mr. Rath and Mr. Poloncarz but also maintained his belief that the Agency should recognize that, particularly in

the City of Buffalo, there are some buildings and projects that will never get done without IDA financial assistance and all of us should be proud of what the Agency has accomplished within the City. Mr. Brown expressed his support of the Agency's adaptive reuse program as transformative to the City of Buffalo. Mr. Brown stated the City is undertaking a comprehensive housing study that should be used to fine tune the adaptive reuse program policy. Mr. Brown stated the City has spent over 30 million dollars to facilitate the construction of over 1,400 new units of work force and affordable housing over the past 10 years. Mr. Brown also expressed a desire that the Agency should incentivize retail activities because the retail industry can produce thousands of entry level jobs and is a pathway for people new to the workforce to acquire work skills and a resume. Mr. Brown concluded by stating that we all know working class people want to work, and as such, the Agency must continue to think out of the box going forward.

Ms. Gallagher-Cohen commented on the philosophical divide between Mr. Poloncarz and herself, commenting that the Agency should not think that our work is done here. Ms. Gallagher-Cohen noted that construction costs in Buffalo are higher than in most cities and rents are lower than in most cities, that New York ranks 49<sup>th</sup> out of 50 states in business friendliness, that the scaffold law provides challenges to developers, and concluded that we should not be telling ourselves that all is well. Ms. Gallagher-Cohen stated that now is the time that the Agency should be stepping on the accelerator, not the brake, expressed her support for Mr. Brown's comments and thanked him for his leadership over the adaptive reuse program and his goal of making Buffalo a 24/7 city. Ms. Gallagher-Cohen stated all she is saying is there is a change in the number of projects and strategically, the Agency needs to understand and react to this change.

Mr. Lipsitz noted that there was no further discussion and directed that the report be received and filed.

Z7+ Presentation. Mr. Weathers updated members on the status of the Agency's Zero Net Energy facility for small, light manufacturing and office space and reminded members of past resolutions authorizing the allocation of certain money to be utilized for site acquisition, final design and construction management and administration, testing and demolition activities in an amount not to exceed one million dollars. Mr. Riggs provided members with a PowerPoint presentation on the project and explained to members the resolution presented today authorizing the Agency to engage Turner Construction to provide design and construction management services. Mr. Weathers commented that at the conclusion of the construction management process, Turner Construction will provide a guaranteed maximum price for actual project construction to the Agency.

Ms. Gallagher-Cohen asked if the Agency has the money to construct the building. Mr. Weathers responded that the Agency does, if it wants to use all of its available money but then stated that the Agency probably would not want to do that and as such it is currently seeking grants from a variety of sources.

Mr. Rath asked if any other industrial development agencies are constructing zero energy facilities. Mr. Weathers responded that he is not aware of any. Mr. Rath then asked if this is being undertaken by any entity in the country. Mr. Weathers commented that this would probably be the first such building in the country. Mr. Cappellino also responded stating that it

is common for IDAs and local development corporations to construct buildings, parking ramps, etc. Here, the unique thing is that the building is a net zero energy use building.

Mr. Poloncarz then moved and Mr. Emminger seconded, to approve of the selection of Turner Construction to provide design and construction management services. Mr. Poloncarz then commented that this is the type of project that is getting noticed, and it will put the Agency ahead of the curve, and also spoke in favor of the proposed location of this project, being the former Bethlehem Steel facility site.

Ms. Gallagher-Cohen stated she will vote against the resolution because she is not sure this project is consistent with the needs of the community, and would rather see shovel ready sites than buildings being constructed. Mr. Weathers commented that the county and ILDC are considering purchasing 150 acres in Lackawanna, at the former Bethlehem Steel site facility as Mr. Poloncarz referred to previously, and stated the Net Zero Building would be the first building at the site, bringing life to the property.

Mr. Brown asked what the building would cost. Mr. Weathers responded that building costs are projected at between \$25-\$30 million. Mr. Brown then asked for the number of jobs that may be created. Mr. Weathers responded that it is anticipated that 300-500 new jobs will be created based on the square footage of the site.

Mr. Blue asked how employees would be transported to and from the site. Mr. Weathers noted that NFTA buses will bring workers to and from the site. Mr. Blue commented that the Agency needs to enter into an agreement with the NFTA to ensure residents will be able to get to the job site. Mr. Riggs responded that transportation is key to getting LEED certified and as such, transportation issues are on the front burner and will be adequately addressed.

Mr. Panzica asked if the Agency has run a proforma to determine if it is financially feasible to build a 25-35 million dollar project. Mr. Riggs responded that the Agency has undertaken a feasibility report and will send that report to the members. Mr. Poloncarz stated that the Agency has already had these discussions. Mr. Weathers confirmed that the Agency will send the report to members.

At this point in time, Mr. Lipsitz called for the vote, and the following resolution was approved by all members present, with only Ms. Gallagher-Cohen voting in the negative:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY AUTHORIZIGN THE ENGAGEMENT OF TURNER  
CONSTRUCTION TO PROVIDE DESIGN AND CONSTRUTION  
MANAGEMENT SERVICES FOR PURPOSES OF CONSTRUCTING AND  
OPERATING A ZERO NET ENERGY FACILITY

## **INDUCEMENT RESOLUTIONS**

Flexo Transparent, LLC, 1146 Seneca Street, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax exemption benefit, mortgage recording tax exemption benefit and real property tax abatement benefit project involving the construction of a 16,200 sq. ft.

addition to the existing facility along with the purchase of related production and storage 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 at least an annual basis or as otherwise indicated below, through the conclusion of 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 \$5,227,500.00 (which represents the product of 85% multiplied by \$6,150,000.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment - that there are at least one hundred fifteen (115) 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, within two years after Project completion, the Company has maintained and created FTE employment at the Facility equal to one hundred twenty (120) FTE employees [representing the sum of the Baseline FTE plus five (5) (the product of 85% multiplied by six (6) 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. Brown asked what the timing of the project is. Mr. Mabry, on behalf of the Company, responded that the Company would like to start construction as soon as possible and anticipates hiring in late 2017 or 2018.

Mr. Brown then thanked the Company for its investment in the Seneca/Babcock neighborhood. Mr. Brown then asked about Minority Women Business Enterprise participation. Mr. Mayberry responded that MWBE considerations will be handled through the construction procurement process and also noted that one of the owners of the Company is a minority business venture.

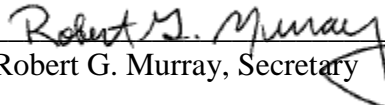
Mr. Lipsitz called for the vote and Mr. Brown moved, and Mr. Rath seconded, to approve of the Project. The following Resolutions were then unanimously approved.

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT ACTION TO UNDERTAKE THE FLEXO TRANSPARENT, LLC (THE "COMPANY") PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF FLEXO TRANSPARENT, 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 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

There being no further business to discuss, Mr. Lipsitz adjourned the meeting at 12:19 p.m.

Dated: December 21, 2016

  
Robert G. Murray, Secretary