

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

- MEETING:** November 1, 2018, at Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor Conference Room, Buffalo, New York
- PRESENT:** Hon. April Baskin, Rev. Mark E. Blue, Hon. Johanna Coleman, Mr. Richard Cummings, Colleen DiPirro, Hon. William J. Krebs, Richard Lipsitz, Jr., Laura Smith and Maria Whyte
- ABSENT:** Hon. Byron W. Brown, Brenda W. McDuffie, John J. Mudie, Hon. Glenn R. Nellis and David J. State
- OTHERS PRESENT:** John Cappellino, Executive Vice President; Karen M. Fiala, Assistant Treasurer and Robert G. Murray, Secretary
- GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist; Bonnie Danni, on behalf of 467 Richmond Avenue, LLC

There being a quorum present at 8:54 a.m., Mr. Lipsitz called the meeting of the Policy Committee to order.

**MINUTES**

The minutes of the October 4, 2018 Policy Committee meeting were presented. Upon motion made by Mr. Krebs, and seconded by Ms. Whyte, the aforementioned Policy Committee meeting minutes were unanimously approved.

**PROJECT MATRIX**

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

**PROJECT PRESENTATIONS**

467 Richmond Avenue, LLC/Rosanna Elizabeth Visual & Performing Arts Campus (REVPAC)-Amendment. Mr. Cappellino reviewed the 467 Richmond Avenue, LLC project proposed at 467 Richmond Avenue in Buffalo, New York involving the renovation and adaptive reuse of the property known as the former Richmond Methodist Episcopal Church involving the revitalization of the facility to consist of a commercial and retail campus for the utilization by performing arts groups as well as for business meeting space and work space for artists.

Mr. Cappellino reminded members that the project as just described was approved by the Agency on June 28, 2017. Mr. Cappellino then informed committee members that the project is being modified and will now include a single approximately 400 sq. ft. apartment to be leased at

approximately \$800 per month. Thus this project is being proposed, as amended, to now include this residential unit as a component part of the project description. Mr. Cappellino also confirmed that the company will now be applying to the City of Buffalo for a 485-a real property tax abatement benefit. All other components of the project remain unchanged.

Ms. DiPirro moved and Ms. Whyte seconded to approve of the project as amended. Mr. Lipsitz called for the vote and the project was then unanimously approved, as amended, for recommendation to members of the Agency for final approval.

467 Richmond Avenue, LLC/Rosanna Elizabeth Visual & Performing Arts Campus (REVPAC)-Tax Certification. Mr. Cappellino reminded committee members that the REVPAC project, as just described, was originally approved by the ECIDA on June 28, 2017. At the time of the June 2017 application, the company submitted a signed unpaid tax certification indicating there were no unpaid taxes on the property. Upon verification by Agency staff, it was determined that at the time the certificate was given, there were past due taxes owing on the property to the county and the city in the amount of approximately \$18,000. Agency staff has been in contact with the company and the company was made aware that the certificate was signed while back taxes were due and owed. The company indicated to staff that their intentions were to pay off the remaining unpaid taxes as part of an overall financing for the project. On October 24, 2018, the company did pay off the remaining unpaid taxes on the property and provided proof of payment to the Agency. To date, all taxes on the subject property are paid and current. Although the company was approved for a mortgage benefit on a \$5 million financing for the project, Agency staff informed the company that no benefits including the mortgage recording tax exemption benefit, could be provided until the Agency considered the tax certification issue. REVPAC moved forward with its mortgage financing on the property without the benefit of the Agency's mortgage recording tax exemption. To date, the company has not received any of the Agency financial assistance approved in June 2017.

Mr. Cappellino continued to explain that as part of the Agency's application process, the certification of unpaid taxes is treated as a material term. The unpaid tax policy adopted by the Agency states that the Agency, in its discretion, will consider the disclosure information and any additional information relating to unpaid real property taxes as a critical component in its determination as to whether to issue financial assistance. Mr. Cappellino then stated that staff recommends that the Policy Committee review the relevant facts regarding the company's tax certification, unpaid taxes, current tax status of the proposed project and determine whether the committee would make a recommendation for the Agency to reaffirm its original approval for the project issued in June 2017. Agency staff also recommends that prior to any action taken by the Agency Board that the Company provide an updated unpaid real property tax certification. Mr. Cappellino also reminded committee members that a recent review of a different project in which the tax certification was not accurate at the time of application resulted in the Agency Board voting to reaffirm the previously approved inducement resolution upon evidence provided that all taxes were current.

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

Ms. Whyte asked if the company had always planned to pay the back taxes with loan proceeds. Ms. Danni then spoke on behalf of the company and noted that the company had always intended to use loan proceeds to pay back taxes owed.

Ms. Whyte then stated that she would like to distinguish this company's erroneous tax certification confirmation from that of the other project recently approved by the Board despite a similar unpaid tax certification problem primarily because the latter company publicly stated that it purposely chose not to pay taxes for business purposes.

General discussion ensued regarding the process by which the Agency can confirm the accuracy of the unpaid real property tax certification provided to the Agency at the time an application is submitted.

Ms. Whyte then moved and Mr. Krebs seconded to make a motion to recommend that the members of the Agency ratify and confirm the June 2017 inducement resolution in consideration of submission of a new unpaid real property tax certification and confirmation that all real property taxes are now current.

Mr. Krebs expressed his support for the project. Mr. Blue also expressed his support for the apartment unit being offered at \$800 per month. Mr. Blue then received confirmation that utility costs were included in the rent.

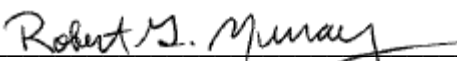
Mr. Lipsitz then called for the vote and the motion was unanimously approved.

Mr. Lipsitz then asked that Policy Committee members return to consideration of a new policy requiring the confirmation and verification of the unpaid real property tax certification. General discussion ensued. Mr. Lipsitz then asked Agency staff if they could develop recommendations or considerations involving either a "find and cure" or a trust but verify approach, to be presented to the Policy Committee at a future meeting for ultimate consideration.

Mr. Cummings then asked if there was any follow-up from the last Policy Committee meeting regarding minority business enterprise/women business enterprise (MBE/WBE) utilization. Mr. Cappellino responded that Agency staff is currently revising its application to probe deeper into this question. Mr. Cummings responded that his concern is a policy concern such that the Agency should have a policy requiring MBE/WBE commitment if a project is to obtain public assistance and as such, is asking the Agency to commit to MBE/WBE utilization requirements for applicants. Mr. Lipsitz thanked Mr. Cummings for his concerns and asked if Agency staff could lead a discussion on MBE/WBE issues at an upcoming Policy Committee meeting.

There being no further business to discuss, Mr. Lipsitz adjourned the meeting at 9:46 a.m.

Dated: November 1, 2018

  
Robert G. Murray, Secretary