

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

DATE AND PLACE: December 20, 2017, at the Erie County Industrial Development Agency, 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203

PRESENT: Rev. Mark E. Blue, James F. Doherty, Hon. Joseph H. Emminger, Richard Lipsitz, Jr., Hon. Joseph C. Lorigo, David L. Lowrey, Brenda W. McDuffie, Hon. Glenn R. Nellis, John J. Mudie, Louis Panzica, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen, Sister Denise Roche and Paul V. Vukelic

EXCUSED: Hon. Diane Benczkowski, Hon. Byron W. Brown, Dottie Gallagher-Cohen, Tyra Johnson, and Hon. Barry A. Weinstein

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

GUESTS: Maria Whyte, Deputy County Executive and Lisa Hicks on behalf of Emerson Huron LLC

At 9:00 am, there being a quorum present, Ms. McDuffie called the meeting to order.

MINUTES

The minutes of the November 29, 2017 meeting of the members were presented. Mr. Lipsitz moved, and Mr. Lorigo seconded, to approve of the meeting 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 November 2017 noting that the balance sheet shows that the Agency finished the month with total assets of \$33.5 million and net assets of \$21.4 million. The monthly income statement shows operating revenues of \$64,000, being behind budget for the month by \$142,000. November operating expenses were under budget by \$41,000, as a result of favorable variances in almost all expense categories. Considering solely operating revenues and operating expenses, there was net loss of \$137,000 for November. However, after costs for strategic initiatives and depreciation, there was a net loss of \$661,000 for the month, mainly as a result of the UDAG funds being granted to the ILDC for the Bethlehem Steel land purchase. On a year-to-date basis, the income statement reflects operating revenues of \$2.6 million which is \$290,000 ahead of budget for the year. The driver of that variance is administrative fees, which at \$1.9 million, are in excess of budget by

\$278,000 through November. Operating expenses of \$2.5 million are below budget by \$340,000. Net special project grant revenue of \$323,000 brings net income for the year to \$379,000. After factoring in strategic investments and depreciation, there is a year-to-date net loss of \$6.9 million. Ms. McDuffie directed that the report be received and filed.

2017 Tax Incentive Induced/Closed Schedule/Estimated Real Property Tax Impact. Ms. Fiala presented this report noting that 25 projects received inducements in 2017. Mr. Lipsitz questioned Ms. Fiala as to the number of projects induced in 2017 compared to 2016. Ms. Fiala responded that the Agency induced 13 projects in 2016. Mr. Lipsitz then responded that the Agency has an approximate 100% increase in induced projects in 2017 over the amount of 2016. Ms. McDuffie directed that the report be received and filed.

Policy Committee Update. Mr. Lipsitz noted that the Policy Committee reviewed the two projects that are before the Board today and recommended approval of the projects as proposed.

Insurance Brokerage RFQ Recommendations. Ms. Profic reviewed the Agency's Professional Services Request for Insurance Brokerage Services for property and casualty ("P&C") and health benefits ("H&B") brokerage services. Ms. Profic noted that the last time an RFQ was undertaken for these services was in 2009. Ms. Profic noted that the RFQ was mailed to the 15 largest P&C and H&B agencies as ranked by the 2017 Business First Book of Lists. Notice of the RFQ was also placed in the Buffalo News, the Challenger Community News and the Criterion. Ms. Profic noted that the RFQ was also posted on the Agency's website. Ms. Profic commented that responses were due on October 6, 2017 and on that date, two P&C proposals and five H&B proposals were received. An internal Agency staff committee undertook initial review of the RFQ responses. This internal staff committee interviewed the two P&C proposal respondents and the three highest scoring firms responding to the H&B RFQ. Proposals were scored based on their proposed insurance program, the qualifications and experience of the Agency and the individuals to be assigned to the engagement and development of women and minority employees and MWBE business enterprise considerations. As a result, the Agency staff recommended Lawley to provide property and casualty insurance brokerage services and Bene-Care, Inc. to provide health and benefits insurance brokerage services. Ms. Profic noted that the Finance and Audit Committee approved the staff recommendation of Lawley as P&C broker and Bene-Care as H&B broker. Mr. Nellis moved and Sister Denise seconded to approve Lawley to provide P&C insurance brokerage services and Bene-Care, Inc. to provide H&B insurance brokerage services, for the 2018, 2019 and 2020 fiscal years, and thereafter, for the 2021 and 2022 fiscal years, directed the Agency's Finance and Audit Committee to review Lawley's and Bene-Care's performance and fees and authorizes, and based on the Agency's Finance and Audit Committee's satisfactory review of same, and upon approval of the Agency's Finance and Audit Committee, that Lawley and Bene-Care, Inc. continue to be retained for the 2021 and 2022 fiscal years. Ms. McDuffie called for the vote and the resolution was unanimously approved.

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

INDUCEMENT RESOLUTIONS

Emerson Huron, LLC, 75 West Huron, Buffalo, New York. Ms. Fiala reviewed this proposed sales tax and mortgage recording tax abatement benefits project involving the renovation and redevelopment of the former C.W. Miller Livery facility located on Huron Street. The building has been vacant for 15 years and when complete, the building will serve as the site for the new City of Buffalo Culinary School and will be operated and leased solely by the Buffalo Public Schools. Approximately 95,000 sq. ft. of the facility will be dedicated to the City of Buffalo Emerson Culinary School, approximately 5,000 sq. ft. will be established for a lobby/restaurant to be opened to the public, and a single 600 sq. ft. residential apartment will also be established.

As a condition precedent of receiving financial assistance and as a material term and condition established by the Agency in connection with 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 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 \$31,279,065.00 (which represents the product of 85% multiplied by \$36,798,900.00 being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment - that there are at least 60 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 FTE employment at the Facility equal to 60 FTE employees. 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.

Ms. McDuffie commented that the single apartment is being constructed to take advantage of the City of Buffalo's real property tax exemption benefit provided under Section 485-a of the New York Real Property Tax Law and Ms. McDuffie noted that at Policy Committee, she asked the developer if the developer would consider renting the apartment to a low to moderate income family and she stated that the developer indicated they would be willing to consider renting the unit to a low to moderate income tenant.

Mr. Doherty asked what the rent for the school would be. Ms. Hicks, on behalf of the developer, responded that the negotiations for lease terms are still being worked out, however, rent has been established at about \$3 million.

Mr. Panzica moved, and Mr. Blue seconded, to approve of 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 EMERSON HURON, 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

St. Paul Group, LLC, 1115 Main Street, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax and mortgage recording tax abatement benefits project consisting of the full scale renovation of an existing vacant structure originally constructed in 1898 known as Our Lady of Lourdes Church. The proposed renovation includes the construction of two new floors within the open cathedral which will result in a building that will measure approximately 32,000 sq. ft. with such end uses to include a first floor retail/restaurant or brewery facility, second floor offices, although tenants are unknown at this point in time, and three residential apartments in a 1-3 bedroom configuration on the third floor. Mr. Cappellino noted the facility will internally connect to a new six story medical office facility being constructed on the real property adjacent to this project, however, the new medical office facility is not a component of this project and is also not seeking financial assistance from the Agency. Mr. Cappellino also noted that the project is located in a highly distressed area and due to the proposed retail uses, and in compliance with

Section 862 of the New York General Municipal Law, the written consent of the Chief Executive Officer of Erie County will be required prior to the provision of any financial assistance.

As a condition precedent of receiving financial assistance and as a material term and condition established by the Agency in connection with 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 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) 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 \$3,217,250.00 (which represents the product of 85% multiplied by \$3,785,000.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment - that the Company has created full-time equivalent ("FTE") employment at the Facility equal to 15 FTE employees representing the product of 85% multiplied by 18 (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. Poloncarz stated his support for the project and noted he has observed the deterioration of the Church over the last decade and commented that this is exactly the type of project for which the adaptive reuse policy should be used for. Mr. Poloncarz further noted that this is an adaptive reuse and mixed use project that is spurring new adjacent medical office building construction that is not seeking financial assistance and is also creating 18 new jobs, all of which shows how far the Agency has evolved over the last several years. Mr. Poloncarz thanked the developers for undertaking the project and thanked the Agency staff for their efforts in ensuring the creation of 18 new jobs.

Mr. Poloncarz then moved, and Mr. Pridgen seconded, to approve of the project as proposed. Mr. Pridgen then commented that the developer has worked closely with the City to obtain all the requisite approvals and has worked with community residents to ensure a

successful project and to make a positive contribution to the neighborhood. Mr. Pridgen concurred with Mr. Poloncarz that this is a great use of the Agency's adaptive reuse policy.

Ms. McDuffie noted that the Agency takes public comments seriously; however, she noted that several of the public hearing comments were inaccurate, in particular with respect to the fact that there will be no loss of revenue to the NFTA related to the Agency's provision of the mortgage recording tax exemption benefit. Ms. McDuffie also thanked the company for its commitment to create 18 new jobs especially in light of the fact that no tenants have been identified as of yet.

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

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF ST. PAUL GROUP, 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

MANAGEMENT TEAM REPORTS

Mr. Weathers then thanked Legislature Mills for his service on the Board of Directors of the ILDC and thanked Agency staff for all of their good efforts in 2017 noting that 26 projects were induced, being double the number of projects induced over the 2016 time period and also thanked the Board for their efforts. Mr. Weathers also thanked Lori Szewczyk for her efforts in securing several grants in 2017 totaling over \$3 million for the benefit of the community which would not have been obtained but for her efforts.

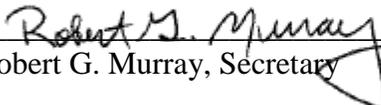
At this point in time, Mr. Weathers asked for a motion to enter into Executive Session to discuss the potential sale of securities held by the Agency, the disclosure of which could substantially affect the value thereof. Mr. Mudie moved and Mr. Poloncarz seconded to enter into Executive Session. Ms. McDuffie called for the vote and the Agency then entered into Executive Session at 9:30 a.m.

Upon motion made by Mr. Poloncarz and seconded by Mr. Lorigo and upon the unanimous vote of all members present, Executive Session was adjourned at 9:39 a.m.

Mr. Weathers then asked for a motion for the Agency to approve and permit the Chief Executive Officer of the Agency to liquidate securities held by the Agency in Athenex, Inc. in amounts and at times determined to be in the best interest of the Agency between January 1 and June 30, 2018. Mr. Poloncarz moved and Mr. Emminger seconded the motion. Ms. McDuffie called for the vote and the motion was unanimously approved.

There being no further business to discuss, Ms. McDuffie adjourned the meeting at 9:41 a.m.

Dated: December 20, 2017


Robert G. Murray, Secretary