

**MINUTES OF THE
BOARD OF DIRECTORS
OF THE
BUFFALO AND ERIE COUNTY
INDUSTRIAL LAND DEVELOPMENT CORPORATION
(ILDC)**

DATE AND PLACE: February 22, 2017, at the Erie County Industrial Development Agency, 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203

PRESENT: Hon. Byron W. Brown, Hon. Joseph C. Lorigo, John Mills, John Mudie, Hon. Mark C. Poloncarz and Maria Whyte

EXCUSED: Richard Lipsitz, Jr.

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: Andrew Federick, Erie County Senior Economic Development Specialist

There being a quorum present at 8:45 a.m., the meeting was called to order by its Chair, Mr. Poloncarz.

MINUTES

Upon motion made by Mr. Mudie and seconded by Ms. Whyte, the January 25, 2017 minutes of the Board of Directors of the Buffalo and Erie County Industrial Land Development Corporation (“ILDC”) meeting were unanimously approved.

REPORTS / ACTION ITEMS / INFORMATION ITEMS

Financial Report. Ms. Profic presented the January 2017 financial statements to the directors. Ms. Profic commented that the balance sheet shows the December 2016 figures and shows that the ILDC ended 2016 with net assets of \$228,000, after a net loss of \$30,000 for the year. Ms. Profic commented that the draft financial statements will be reviewed by the Finance and Audit Committee on March 13, 2017 and presented to this Board at its March 22nd meeting. For the month of January 2017, the ILDC finished with total assets of \$232,000 and net assets of \$227,000. Monthly income for the month of January shows income of \$480, expenses of \$835, and a loss of \$355. There being no comments, Mr. Poloncarz directed that the report be received and filed.

Property Disposition-3445 River Road. Mr. Poloncarz reviewed the proposed disposition of the real property located at 3445 River Road, Tonawanda, New York to Sumitomo Rubber USA, LLC and noted that staff, as directed by the ILDC directors, has continued its negotiations with the company and was successful in establishing an increased purchase price from \$27,665 per acre to \$30,000 per acre for a total sales price of \$192,900. Mr. Poloncarz then asked staff if sale proceeds will be distributed back to the Agency. Mr. Cappellino responded that staff recommends that the land sale proceeds stay within the ILDC. There being no further discussion, Ms. Whyte moved and Mr. Mills seconded to approve of the property disposition. Mr. Poloncarz called for the vote and the following resolution was unanimously approved:

RESOLUTION AUTHORIZING (1) THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (THE "ILDC") TO ENTER INTO A PURCHASE AND SALE AGREEMENT WITH SUMITOMO RUBBER USA LLC OR AN AFFILIATED ENTITY EXISTING OR TO BE FORMED FOR THE SALE OF APPROXIMATELY 6.43 ACRES OF REAL PROPERTY LOCATED AT 3445 RIVER ROAD IN THE TOWN OF TONAWANDA, NEW YORK; (2) TO CONFIRM THAT THERE IS NO REASONABLE ALTERNATIVE TO A BELOW FAIR MARKET VALUE TRANSFER OF THE REAL PROPERTY; AND (3) TO AUTHORIZE THE ILDC TO TAKE ALL RELATED ACTIONS THERETO.

Bethlehem Steel Property Acquisition. Ms. Whyte reviewed the ILDC's proposed purchase of approximately 150 acres of the former Bethlehem Steel site located in Lackawanna, New York. Ms. Whyte noted that the real property is currently owed by Tecumseh Real Development Inc. ("Tecumseh"), which constitutes a portion of the Bethlehem Steel complex and in its current contaminated state, while simultaneously being difficult to access, has historically been both blight on and a challenge for the community. Ms. Whyte noted that Erie County has spent and appropriated for future expenditures millions of dollars to improve rail and road access and utility infrastructure for the benefit of the real property and the ILDC has as a condition of its purchase of the real property negotiated with Tecumseh for the environmental remediation of the real property with a goal of creating one of the largest commercial/industrial parks, with tri-model access and with pre-certified New York State tax incentives, in New York State. Ms. Whyte commented that the ILDC must take certain specific actions including: (i) the ILDC must resolve to receive a grant from the Erie County Industrial Development Agency's UDAG fund in the amount of \$5,700,000 to enable the ILDC to purchase the real property and to accept a grant from the Agency's UDAG fund in the amount of \$1,000,000 for purposes of carrying the property; (ii) the ILDC must resolve to submit a reimbursement to the Agency for the grant of UDAG funds, said reimbursement to be made by ILDC submission of ESD grant proceeds in the amount of \$2,780,000 to the Agency and from submission of 50% of the net proceeds received by the ILDC upon the future sale of, and with respect to each such future sale of, portions of the real property to refund the Agency in the amount not to exceed \$6,700,000; (iii) the ILDC must make a determination pursuant to the State Environmental Quality Review Act; (iv) the ILDC must resolve to continue negotiating and to execute and deliver an agreement of purchase and sale for the real property to be entered into with Tecumseh for the anticipated purchase price of \$5,700,000; (v) the ILDC must authorize and approve the ability of the ILDC to enter into certain brownfield site clean-up agreements that encumber the entirety of the real property to be purchased; (vi) the ILDC must approve of and authorize the execution of a \$2,780,000 New York State Empire State Development Corporation grant which will be granted

to the ILDC to offset the real property purchase price, (vii) the ILDC must agree to enter a certain license agreement with Tecumseh to allow Tecumseh to access private infrastructure improvements existing on the real property, said license agreement to terminate upon construction completion of similar public infrastructure improvements.

Ms. Whyte then thanked Legislator Mills and Legislator Lorigo for their support of Erie County bonding actions which will benefit the real property by providing funding for the required public infrastructure improvements, thanked County Executive Poloncarz for his leadership and guidance with respect to acquiring the real property, thanked Mr. Cappellino, and Robert Murray and Melanie Marotto on behalf of Harris Beach for their strong efforts, and thanked Erie County Attorney Kristen Walder and Erie County Department of Environment and Planning, Ken Swanekamp and Chris Pawenski, for all of their dedication and input. In addition, Ms. Whyte thanked Erie County Economic Development Specialist Andy Federick for his good work and also thanked Tecumseh for being willing to sell the property to the ILDC.

Mr. Poloncarz confirmed that this is both an acquisition and environmental remediation project ultimately to result in 150 acres of an industrial and commercial facility with road, rail and water access all for the benefit of future job creation in Erie County.

Ms. Whyte moved and Mr. Mudie seconded to approve of the actions described herein. Mr. Poloncarz called for the vote and the following resolution was unanimously approved:

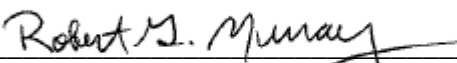
RESOLUTION OF THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (THE "ILDC") AUTHORIZING THE ILDC TO: (i) ENTER INTO A FUNDING AGREEMENT FOR ECONOMIC DEVELOPMENT PURPOSES WITH THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") TO PROVIDE \$6,700,000 IN THE FORM OF A PARTIALLY REFUNDABLE GRANT FROM THE AGENCY'S U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT URBAN DEVELOPMENT ACTION GRANT ("UDAG") REFLOW FUND; (ii) MAKE A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iii) AUTHORIZE THE NEGOTIATION AND EXECUTION AND DELIVERY OF AN AGREEMENT OF PURCHASE AND SALE TO BE ENTERED INTO WITH TECUMSEH REDEVELOPMENT INC. ("TECUMSEH") WITH RESPECT TO A CERTAIN PROJECT (AS MORE FULLY DEFINED BELOW); (iv) AUTHORIZE THE EXECUTION AND DELIVERY OF BROWNFIELD SITE CLEANUP AGREEMENT(S) WITH RESPECT TO THE PROJECT (AS MORE FULLY DESCRIBED BELOW); (v) APPROVE OF AND AUTHORIZE THE EXECUTION AND DELIVERY OF A \$2,780,000 NEW YORK STATE EMPIRE STATE DEVELOPMENT CORPORATION GRANT FOR PURPOSES OF THE PROJECT (AS MORE FULLY DESCRIBED BELOW); AND (vi) ENTER INTO A CERTAIN LICENSE AGREEMENT WITH TECUMSEH WITH RESPECT TO CERTAIN EXISTING INFRASTRUCTURE IMPROVEMENTS RELATED TO THE PROJECT

Cantalician Center for Learning, Inc. Ms. Fiala reviewed the requested modifications to be made to the Cantalician Center for Learning, Inc. bond documents to account for violation of certain financial covenants originally made by Cantalician Center. General discussed ensued and upon motion made by Ms. Whyte and seconded by Mr. Lorigo, the following resolution was unanimously approved:

RESOLUTION AUTHORIZING THE EXECUTION OF A COVENANT WAIVER AND FINANCING DOCUMENTS AND NOTE MODIFICATION AGREEMENT RELATING TO THE PRIOR ISSUANCE BY BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION OF ITS TAX-EXEMPT MULTI-MODE REVENUE BONDS (CANTALICIAN CENTER FOR LEARNING INC. PROJECT), SERIES 2012A ISSUED IN THE INITIAL AGGREGATE PRINCIPAL AMOUNT OF \$9,525,000 AND ITS TAX-EXEMPT MULTI-MODE REVENUE BONDS (CANTALICIAN CENTER FOR LEARNING INC. PROJECT), SERIES 2012B ISSUED IN THE INITIAL AGGREGATE PRINCIPAL AMOUNT OF \$1,000,000 AND THE EXECUTION OF RELATED DOCUMENTS

There being no further business to discuss, Mr. Poloncarz adjourned the meeting at 8:55 a.m.

Dated: February 22, 2017



Robert G. Murray, Secretary