

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

- MEETING:** July 2, 2015, at Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor Conference Room, Buffalo, New York
- PRESENT:** James J. Allen, Hon. Byron W. Brown, Elizabeth Burakowski, Hon. Mary Cooke, Hon. Mary F. Holtz, Chris T. Johnston, Richard Lipsitz, Jr., Frank B. Mesiah, John J. Mudie, Hon. Glenn R. Nellis, Hon. Edward A. Rath, III, and David J. State
- ABSENT:** Brenda W. McDuffie and Laura Smith
- OTHERS PRESENT:** Hon. Mark Poloncarz, Dottie Gallagher-Cohen, Steven Weathers, Chief Executive Officer; John C. Cappellino, Executive Vice President; Andrew Schoeppich, Chief Financial Officer; Karen M. Fiala, Assistant Treasurer; and Robert G. Murray, Secretary
- GUESTS:** Greg Sehr, on behalf of Shevlin Land and Cattle Co.; Dan Hamister on behalf of Orchard Heights, Inc.

There being a quorum present at 8:35 a.m., Mr. Lipsitz called the meeting to order.

Mr. Lipsitz noted that Ms. McDuffie was participating via teleconference however she would not count for quorum purposes and is unable to vote because she is not physically present.

Mr. Lipsitz next introduced Mr. John Mudie as the newest member of the Policy Committee noting that Mr. Mudie is the new President of the Buffalo AFL-CIO Central Labor Council and, due to being President of the Buffalo AFL-CIO Central Labor Council, also, now, a new member of the ECIDA.

## **MINUTES**

The minutes of the June 4, 2015 Policy Committee meeting were presented. Upon motion made by Mr. Allen, and seconded by Mr. Rath, the aforementioned Policy Committee meeting minutes were unanimously approved.

## **PROJECT MATRIX**

Mr. Lipsitz reviewed the Agency Project Matrix. There being no comments, Mr. Lipsitz directed that the report be received and filed.

## **PROJECT PRESENTATIONS**

Shevlin Land and Cattle Co. LLC, 1900 North America Drive, West Seneca, New York. Ms. Fiala reviewed this proposed sales tax and real property tax abatement benefits project in connection with the construction of a new 15,000 sq. ft. regional dispensary facility for lease to Upstate Pharmacy. Ms. Fiala noted that Upstate Pharmacy is currently leasing another facility within the Town of West Seneca, that its lease has expired, and that the existing facility cannot accommodate Update's current and future business needs.

Ms. Fiala noted that in exchange for providing the sales tax and real property tax abatement benefits, the approval of this project will be conditioned upon adherence to certain material terms and conditions with respect to potential recapture of financial assistance as follows:

**Draft Recapture Material Terms**

Condition	Term	Recapture Provision
Total Investment	At project completion	Investment amount equal to or greater than 85% of project amount Total Project Amount = \$1,700,000 85% = \$1,445,000
Employment	To coincide with PILOT period	Maintain base: 70 Create 85% of projected: 10 85%: 8 Recapture Employment: 78
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Recapture Period	Coincides with 7 year PILOT term	Recapture of state and local sales taxes and real property taxes

Ms. Burakowski queried as whether or not the project is a retail project as defined under the New York General Municipal Law. Mr. Murray confirmed that customers will not be visiting the actual facility to obtain goods and the sales tax transaction actually occurs off-site and as such, the project does not qualify as a retail project under the New York General Municipal Law.

Mr. Mudie queried as to the pay for the 10 new jobs to be created. Mr. Sehr responded that pay will range between \$25,000 for delivery personnel and upwards to \$110,000 for pharmacy technicians and specialists.

Ms. McDuffie queried as to whether the company is a for-profit entity. Mr. Sehr responded that it is a for-profit business that provides pharmacy services to residential group homes for people with developmental disabilities and emotional challenges as well as pharmacy services to cancer patients referred to them by their oncologist or cancer care system like Roswell Park Cancer Institute. Mr. Sehr confirmed that the pharmacy is not a retail walk-in pharmacy for consumers. Mr. Allen then moved and Ms. Cooke seconded to approve of the project. Mr. Lipsitz then called for the vote and the project was unanimously approved.

Orchard Heights, Inc., 5200 Chestnut Ridge Road, Orchard Park, New York. Mr. Cappellino reviewed the proposed project noting that the Agency induced this project in 2014 and the project at that point in time involved a sales tax, mortgage recording tax and real property tax exemption in connection with the expansion of the existing assisted living and memory care residences. Due to market conditions, the company has decreased the size of its proposed project and now will only include one, instead of two, 32 unit independent living apartment buildings resulting in approximately a \$10,000,000 decrease in project costs and a 35% reduction in financial assistant to be provided by the Agency.

Mr. Cappellino also noted that the amended project will result in two additional FTE positions in comparison to the original approval. However, part-time employment positions will decrease.

Mr. Cappellino noted that in exchange for providing sales tax, mortgage recording tax and real property tax abatement benefits, the approval of this project will be conditioned upon adherence to certain material terms and conditions with respect to potential recapture of financial assistance as follows and as amended from the original project:

**Draft Recapture Material Terms**

Condition	Term	Recapture Provision
Total Investment	At project completion	Investment amount equal to or greater than 85% of project amount Project Amount = \$18,698,569 85% = \$15,893,783
Employment	See PILOT term	Maintain 100% of base: 49 FT            53 PT 85% of projected: 5 FT            13 PT Total Recapture Employment: 54 FT           66 PT
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Recapture Period	Coincides with a 7-PILOT Term	Recapture of state and local sales taxes, mortgage tax and PILOT

Mr. Allen confirmed that this is merely an amendment to the original application due to the now smaller size of the project and the change in project description as well as the related decreased project costs. Mr. Cappellino confirmed Mr. Allen’s conclusions.

At this point in time, Mr. Cappellino introduced Dan Hamister who spoke on behalf of the company.

At this point in time, Mr. Brown and Mr. Nellis joined the meeting.

Ms. McDuffie queried as to whether this project is consistent with the new senior housing policy recently approved by the Agency. Mr. Cappellino responded that this project does not fall within the ECIDA’s new senior housing policy because this is an assisted living care community project not just a standalone for-profit senior housing apartment facility.

Ms. McDuffie queried as to whether any part-time employees will be given health care benefits. Mr. Hamister responded that part-time employees get limited benefits and priority preference to move to full-time positions depending on the particular part-time employee’s schedule and ability to slide into odd hours that may become open due to the 24/7 nature of operating the facility.

Ms. McDuffie queried as to the profile of the employees. Mr. Hamister responded that 80-90% of the staff are female but did not know the number or percentage of employees based upon ethnicity. Ms. McDuffie queried as to whether employees are paid minimum wage. Mr. Hamister responded that employees start at a rate of \$10 per hour.

Mr. Lipsitz queried as whether part-time employees make the same hourly wage as full-time employees. Mr. Hamister responded in the affirmative.

Mr. Rath queried as to occupancy and demand. Mr. Hamister responded that the facility is presently 95% occupied.

Mr. Johnston queried as to why the project has decreased in size. Mr. Hamister responded that the expansion costs were too great and would have negatively affected the company's profitability especially because the market could not bear the cost increases.

Mr. Lipsitz noted that he voted against this project as originally proposed in 2014 because he believes wages are too low.

At this point in time, Mr. Allen moved and Mr. Rath seconded to approve of the project.

Mr. Mesiah queried the company with respect to its employee hiring practices. Mr. Hamister responded that the company places ads in the Buffalo News, the local Bees, online and also relies on word of mouth from its current employees. Mr. Mesiah then expressed concern that the company is not reaching into the Latino and African-American communities.

Ms. McDuffie queried as to whether there is transportation from urban areas to the facility. Mr. Hamister responded that he was unsure as to whether public transportation is available.

At this point in time, Mr. Lipsitz called for the vote. The motion was then approved by a vote of 10-2 with Mr. Lipsitz and Mr. Mudie voting in the negative.

## **PAY EQUITY**

Mr. Lipsitz reviewed the status of the draft pay equity policy and confirmed that pay equity is a real problem in Erie County and in New York State and concluded by stating that the goal is not to fix the gender wage gap, but to insure that any company receiving financial assistance from Erie County adheres to equal pay laws. Mr. Lipsitz then stated that he will be asking for a motion to accept the policy as currently drafted and plans on seeking a vote to send the policy to the full ECIDA Board for ultimate approval at the July 17, 2015 meeting.

Ms. Burakowski then moved to approve of the pay equity policy provided Agency staff and counsel can review and refine the policy and related documents to insure consistency with other Agency policies. Ms. Holtz then seconded the motion.

Ms. Holtz then spoke in favor of the policy stating that she grew up in a time period when women could only be secretaries, nurses or teachers and the ECIDA board would be occupied by men only. She then stated that this policy mainly reinforces existing pay equity laws that are already in existence and as such, she fully supports the policy.

Ms. Gallagher-Cohen then spoke noting that she is speaking on behalf of the Buffalo Niagara Partnership (BNP) and in place of policy committee member Laura Smith who was unable to be here today. Ms. Gallagher-Cohen noted that she supports pay equity but she and the BNP have concerns with how pay equity would be implemented by the Agency. Ms. Gallagher-Cohen then presented a revised pay equity policy that she has prepared that meets all of the goals of pay equity as proposed by Mr. Lipsitz and Mr. Poloncarz and as contained in the existing draft policy and would allow the Agency to be the first IDA in New York State to support pay equity. Ms. Gallagher-Cohen recounted that the BNP has reached out to its membership and also noted that no other IDA or public benefit corporation has a policy on pay equity because these entities already have requirements that all federal and state laws must be adhered to and as such, they do not need to highlight any one law

over any other law in particular like environmental laws or tax laws, etc. She expressed concern that the pay equity policy puts the Agency into a regulatory role that is not consistent with the Agency's core mission. In particular, when random audits are added to the Agency's mission, it creates uncertainty contrary to a good business climate. She noted that the Agency has not received push back from the business community with respect to other recently enacted policies and various material terms and conditions because those terms and conditions are predictable and because business desires predictability and certainty.

Ms. Gallagher-Cohen confirmed that she and the BNP support the pay equity policy, however, the policy as drafted excludes other protective classes, is duplicative with respect to federal and state laws already requiring pay equity and will not be adopted by the other IDAs thus creating an uneven playing field within western New York. The goal should be that the Agency establishes, up front, that companies applying for financial assistance are already compliant with pay equity laws and also pledge to continue to remain compliant with pay equity laws with annual certifications confirming the original pledge and commitment. Ms. Gallagher-Cohen then proposed certain equal pay language as a material term and condition and as a potential recapture trigger requiring annual certifications and sign-offs. She also proposed various revisions to the ECIDA's website to ensure easy visibility of all Agency policies and to reinforce pay equity goals.

Ms. Gallagher-Cohen then reiterated her concern that random audits breed uncertainty in the business community and are contrary to and inconsistent with the Agency's mission of creating opportunities for business growth.

Mr. Poloncarz thanked Ms. Gallagher-Cohen for her comments and stated that the pay equity policy reminds him of President Reagan's famous quote: "trust, but verify". Mr. Poloncarz noted that the Equal Pay Act has been a law since 1962 and yet, we are still talking about pay inequality. Mr. Poloncarz confirmed that we are merely asking companies to enforce the law. In 2014, Mr. Poloncarz established by executive order a policy requiring all Erie County vendors to adhere to pay equity and subject themselves to audit to confirm pay equity compliance. Despite initial business community concerns, the County has experienced no problems in any of its vendor relationships. Mr. Poloncarz stated that the BNP policy is illusory because it requires no verification if the company is actually doing what it says it must do. The draft pay equity proposal before the Committee members today requires verification because the community has a right to confirm it pay equity is being adhered to. Mr. Poloncarz stated that he believes that a company would welcome such an audit so that it could show the community that it complies with pay equity laws especially if it is receiving a tax benefit from the people of Erie County. As such, only those businesses not adhering to pay equity laws must be the ones objecting to this policy. In conclusion, Mr. Poloncarz stated that if the Agency is providing benefits, it must do so for the benefit of the community and, because pay equity will benefit the community, it is necessary to verify compliance thorough auditing in order to ensure the goal and to guaranty that a company agreeing to pay equity principles is in fact complying with pay equity principles.

Mr. Allen stated that he supports pay equity, however, the issue is the random audit procedure as currently proposed. He stated if the Agency desires certainty, it should audit all companies not just a few randomly selected companies. Mr. Allen stated that he can support the BNP policy, but he cannot support a policy that gives power for a County Department to randomly audit a private business.

Mr. Rath stated that he, like everyone here, supports pay equity, but the issue he is concerned about deals with process. He noted the BNP has reached out to the business community and gotten a business perspective on how to insure pay equity. He stated his concerns with a random audit policy

because such a policy is built on a “guilty until proven innocent” model and Mr. Rath expressed his displeasure with such a model. He concluded by stating the pay equity policy has nothing to do with the Agency’s mission and that the Agency needs to thoughtfully consider the BNP proposal and requested that it be given more time to consider the proposal. In sum, Mr. Rath stated he would like to table the pay equity policy in order to allow members to consider the BNP alternative which is consistent with the Agency’s mission.

Mr. Lipsitz stated that the Agency is here to protect taxpayer money when it comes to providing incentives and assistance and protecting taxpayers is paramount. If a business wants financial assistance, it must then adhere to our policies and our policies must be verified.

Mr. Rath moved and Ms. Cooke seconded to table the originally proposed pay equity policy.

Ms. Cooke expressed her belief that tabling the policy would allow her time to review the BNP proposal and to consider unintended consequences. She expressed her belief that there are many complexities related to pay equity issues including flexibility, availability, hours, etc., which all can contribute to and explain why one person is paid x and another person is paid y. She concluded by stating the ability to randomly audit only 3 or 4 businesses a year will not be able to prove anything.

Mr. Rath stated that the Erie County Industrial Development Agency will be the only IDA in Erie County to pass this policy which will further frustrate the business community.

Ms. Cooke also suggested that tabling the policy will allow other towns that do not have their own IDAs to carefully review the BNP proposal.

Mr. Poloncarz commented that using a random number of audits is and will be based on generally accepted auditing principles which rely on statistical review of the number of companies that may be audited over any given time period and, for instance, auditing 3-4 businesses out of a pool of 20 businesses would actually be a large number of audits to undertake.

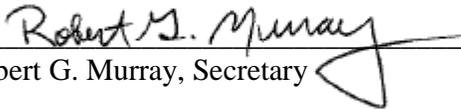
Ms. Gallagher-Cohen responded that random auditing will only beget the need for more thorough analysis because pay equity is a gray area and she also noted that New York State has a low number of pay equity complaints at the state level in general.

At this point in time, Mr. Lipsitz called for a vote on the motion made by Mr. Rath and seconded by Ms. Cooke to table the originally proposed pay equity policy. The motion failed to pass by a vote of only 3 in favor (Mr. Rath, Ms. Cooke and Mr. Allen) and 9 not in favor in tabling the policy vote.

Ms. McDuffie commented on the importance that the ECIDA be a leader in economic development that also protects its labor force without any concern that a business receiving financial assistance can treat employees unfairly. Ms. McDuffie continued on by stating that the ECIDA was the first IDA in Erie County to adopt a recapture policy and, as a woman, it is unacceptable that in 2015 a pay equity disparity still exists within our community. With respect to monitoring, Ms. McDuffie expressed her belief that without verification it is unlikely that people will follow the laws. If companies desire financial assistance, they must comply with the Agency’s policies and as such, must subject their businesses to further review and audit. Ms. McDuffie expressed confidence that the audit process will be fair and concluded by stating she supports the draft pay equity policy as currently written.

Mr. Lipsitz then called for a vote on the motion made by Ms. Burakowski and seconded by Ms. Holtz to approve of the draft Pay Equity Policy as made a part of these minutes. The motion passed with 9 members voting in favor of the motion and 3 members (Mr. Rath, Ms. Cooke and Mr. Allen) voting against the motion.

There being no further business to discuss, upon motion made by Mr. Rath and seconded by Ms. Holtz, Mr. Lipsitz adjourned the meeting at 9:47 a.m.

  
Robert G. Murray, Secretary