

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

DATE AND PLACE: June 22, 2016, at the Erie County Industrial Development Agency, 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203

PRESENT: Hon. Diane Benczkowski, Hon. Byron W. Brown, Dennis Elsenbeck, Hon. Joseph H. Emminger, Dottie Gallagher-Cohen, Richard Lipsitz, Jr., Brenda W. McDuffie, Frank B. Messiah, John J. Mudie, Glenn R. Nellis, Dr. Carol Nowak, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen, Hon. Edward A. Rath III, David J. State, Paul V. Vukelic and Hon. Barry A. Weinstein

EXCUSED: James F. Doherty

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

GUESTS: Andrew Federick, Erie County Senior Economic Development Specialist; Jeff Kohler, Kohler Awning, Inc. and Dan Ronan, Derrick Corporation

There being a quorum present at 11:08 a.m., the meeting of the members of the Erie County Industrial Development Agency was called to order by its Chair, Ms. McDuffie.

Ms. McDuffie stated that she has received notice of the resignation of Board member, Chris Johnston, and then Ms. McDuffie thanked Mr. Johnston for his service and leadership.

MINUTES

The minutes of the May 25, 2016 Meeting of the Members were presented. Mr. Messiah moved and Mr. Nellis seconded to approve of the minutes as drafted. Ms. McDuffie called for the vote and the minutes were unanimously approved.

Ms. McDuffie stated that she would like to rearrange the agenda items over concern that the quorum that is currently being enjoyed may not hold throughout the duration of the meeting.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Policy Committee Update. Mr. Lipsitz provided members with an update of the most recently completed Policy Committee meeting, and noted that while there was no quorum present, those who were present expressed approvals for providing financial assistance to the Great Lakes Orthodontics, Ltd. And Kohler Awning, Inc. projects to be presented to the members today. Ms. McDuffie then directed that the report be received and filed.

INDUCEMENT RESOLUTIONS

Great Lakes Orthodontics, Ltd., 200 Cooper Avenue, Tonawanda, New York. Mr. Cappellino reviewed this proposed sales tax and real property tax abatement benefits project involving the expansion and renovation of the company's existing facility by approximately 25,000 additional sq. ft. to allow for expanded manufacturing, warehousing and office space uses.

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 recapture of state and local sales and use tax exemption benefits and real property tax abatement benefits, submit on at least an annual basis or as otherwise indicated below, through the term of the PILOT 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 \$4,254,446.00 (which represents the product of 85% multiplied by \$5,005,230.00, being the total project cost as stated in the Company's application for Financial Assistance); and
- (ii) Employment Commitment - that there are at least two hundred twenty-one (221) existing full time equivalent ("FTE") employees and nineteen (19) part-time equivalent ("PTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE/PTE"); and
 - the number of current FTE/PTE employees in the then current year at the Facility; and
 - that the Company has (i) maintained and created FTE employment at the Facility equal to two hundred twenty-nine (229) FTE employees representing the sum of two hundred twenty-one (221) Baseline FTE plus eight (8) [the product of 85% multiplied by nine (9) (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)] and (ii) maintained the Baseline PTE at the Facility. 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; and
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency's Pay Equity Policy; and
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency's Unpaid Real Property Tax Policy.

Mr. Emminger expressed his support for the project. Mr. Weinstein moved and Mr. Emminger seconded to approve of the project. Ms. McDuffie called for the vote, and the following resolutions were unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT ACTION TO UNDERTAKE THE GREAT LAKES ORTHODONTICS, LTD. PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF GREAT LAKES ORTHODONTICS, LTD., 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, AND (B) 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

Kohler Awning, Inc., 2600 Walden Avenue, Cheektowaga, New York. Ms. Fiala reviewed this proposed sales tax, mortgage recording tax and real property tax abatement benefits project involving the proposed construction of a 12,000 sq. ft. expansion to the company's existing facility. The additional space will be utilized for additional manufacturing capacity as well as expanded material storage.

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, Ms. Fiala noted that the Company must, subject to potential termination and/or recapture of state and local sales and use tax exemption benefits, mortgage recording tax exemption benefits and real property tax abatement benefits, submit on at least an annual basis or as otherwise indicated below, through the term of the PILOT 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 \$722,500.00 (which represents the product of 85% multiplied by \$850,000.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment – that there are at least fifty (50) 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 (i) maintained and created FTE employment at the Facility equal to fifty-one (51) FTE employees [representing the sum of fifty (50) Baseline FTE plus the product one new FTE (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)] and (ii) maintained the Baseline PTE at the Facility. 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; and
- (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. Benczkowski queried as to whether the company has engaged in retail operations. Mr. Kohler responded that the company is engaged in manufacturing awnings. Mr. Cappellino responded that Kohler Awning manufactures and custom designs awnings and frames for awnings and also noted that customers do not visit the company's headquarters to obtain the goods or services and as such, Kohler Awning is not engaged in retail services as defined in the

IDA statute and further stated that new financial assistance is only being provided on the new components of the project as proposed and will not affect the existing facility.

Mr. Elsenbeck moved and Mr. Weinstein seconded to approve of the project. Ms. McDuffie called for the vote, and the following resolutions were unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT ACTION TO UNDERTAKE THE KOHLER AWNING, INC. (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 KOHLER AWNING, INC., 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

RECAPTURE

Derrick Corporation. Mr. Cappellino reviewed the two Derrick Corporation projects under consideration for recapture of financial assistance due to the company's loss of baseline employment that it was otherwise required to maintain. Mr. Cappellino briefly noted that the Agency has been involved in at least three other projects with Derrick Corporation and all prior projects have resulted in significant job increases over the years. Mr. Cappellino then briefly reviewed the proposed recapture options and further noted that the Policy Committee met on three different occasions to review the proposed recapture, including an initial meeting with the company to review the status of its employment situation and a second and third meeting with just the Policy Committee itself to identify and analyze various recapture scenarios. Mr. Cappellino stated that the Policy Committee developed two options, as being presented to the Board today, including an option that requires a full PILOT payment now and a two-year watch list time period, after which, the company would, if it does not otherwise meet its employment

commitments, thereafter continue to make a full pay PILOT payment and incur a pro rata reduction in sales tax and mortgage recording tax exemption benefits previously provided. Mr. Cappellino then explained the second option which would entail that a pro rata PILOT payment be made during a two year watch list period, after which, if the company does not meet its employment requirements, the company would be required to make only a pro rata PILOT payment and there would be no further recapture made with respect to sales tax and mortgage recording tax financial assistance.

Mr. Poloncarz then moved to support option one and stated that while it is fair to say that Derrick Corporation has been a good employer for the area, he also noted that the company did agree to have financial assistance recaptured. Mr. Poloncarz stated that the Agency has led the state in recapture efforts and further stated that utilizing a recapture option is not a penalty, because the Agency would not have provided the financial assistance in the first instance but for the company's promise to create and retain certain employment numbers. Mr. Poloncarz continued to state that option one is the least onerous because it gives the company two years, during the two year watch period, to increase its employment levels without impacting sales and mortgage recording tax financial assistance, thus allowing the company time to rebuild its workforce, which was a material term of providing financial assistance. Mr. Poloncarz continued to state that this is the first time the Agency is considering implementing the recapture policy based on a premise the if the company did not create the jobs as proposed, then the company should not get the real property tax benefits related thereto. Mr. Poloncarz continued to state that if the Agency passes a recapture policy and then ignores it, then, Mr. Poloncarz questioned, what does this say about our policy? Mr. Poloncarz reminded members that the Agency is a fiduciary for the taxpayers of Erie County and in return for providing financial assistance to a company, that same company has a commitment to create the jobs as proposed. Mr. Poloncarz stated his understanding that a global downturn in the oil and gas industry has negatively impacted this company but, Mr. Poloncarz countered that the company signed a contract committing itself to retain and create jobs and to adhere to a recapture event. Mr. Poloncarz noted the agreement did not provide a carve out for a global downturn in the oil and gas industry. In conclusion, Mr. Poloncarz stated that if the Agency ignores its recapture policy, then the Agency is really saying that its recapture policy is moot and means nothing.

Mr. Mesiah then seconded to approve of option one.

Ms. McDuffie then asked the company if it had any additional information that it wished to share with the Agency. Mr. Ronan responded that the company does not wish to do so.

Ms. Benczkowski expressed her support for Mr. Poloncarz's statements and noted that option one is a fair compromise.

Mr. Elsenbeck stated that the oil and gas sector is seeing unprecedented negative impacts but noted on a regional basis, this area supports the energy sector and should be able to recognize the risks that this sector faces. Mr. Elsenbeck asked the board to consider Derrick Corporation's prior investments and job creation that it has made over the many years that it has been in business and, given the unprecedented impacts that the oil and gas sector is facing, Mr. Elsenbeck concluded that the Agency should not be adding to the company's burdens.

Mr. Weinstein expressed his preference to give Derrick Corporation more time to increase its employment numbers. He stated he does not want to add to the burdens of the company. However, Mr. Weinstein expressed support for Mr. Poloncarz's statements, but then stated his desire to give the company additional time.

Mr. Lipsitz expressed his opinion in favor of option one and stated that the company was aware of the risks and the potential for recapture and given that the company has agreed to the material terms, the Agency then is a guardian of tax benefits for our community and must act accordingly.

Mr. Rath expressed his support in favor of option two because the energy industry sector shows sign of improvement. However, in recognition of the fact that the oil and gas industry is the most volatile industry in the world, the Agency should respect this industry and be business friendly and we should set an example of being aware of the industry's particular challenges.

Ms. Gallagher-Cohen noted that the recapture policy was designed for bad actors, but that here, Derrick Corporation is subject to a contract that says if Derrick Corporation does not meet its obligations that the ECIDA is not required to recapture, such that the ECIDA can choose what it wants to do based on the facts and the industry sector in question. She then asked why the ECIDA would want to kick a company when it is down? Ms. Gallagher-Cohen stated that the company does not need to be in Erie County, but has invested here and grown its business and employment over many, many years, and then, she expressed her support for option two. Ms. Gallagher-Cohen concluded by stating New York is ranked 49 out of 50 states as the most business unfriendly state, and the ECIDA's role should be to level the playing field.

Mr. Poloncarz responded that this is the first case where the ECIDA is considering to recapture financial assistance since the recapture policy was approved, and said that this is not a witch hunt, and that the first option allows the company two years to come into compliance while at the same time not immediately recapturing sales and mortgage tax benefits thus allowing the company to retain those benefits if it comes into job commitment compliance. Mr. Poloncarz stated that the ECIDA has a recapture policy and it cannot ignore it, and stated his preference for option one by noting that the company will be given a two year period to come back into compliance, and further noting that this option also protects Erie County taxpayers.

Mr. State questioned as to whether, at the end of the two year watch list time period, if the Agency could reconsider its recapture options. Mr. Cappellino and Ms. McDuffie stated that there is nothing preventing the ECIDA from reconsidering its options at that point in time.

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

Ms. McDuffie stated that the recapture policy was created over at least a one year time period, that the policy is flexible by design, and the options presented today reflect the intentions of the recapture policy.

Ms. McDuffie then called for the vote. A roll call vote was held, with Mr. Lipsitz, Ms. McDuffie, Mr. Nellis, Mr. Brown, Mr. Pridgen, Mr. Poloncarz, Ms. Benczkowski, Mr. Emminger, Mr. Mudie, Mr. Mesiah, Ms. Nowak, and Mr. State voting in favor of option one,

and Mr. Rath, Mr. Weinstein, Ms. Gallagher-Cohen, and Mr. Elsenbeck voting against option one. The motion passed by a vote of 12 to 4.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic presented the financial statements noting that the Agency as of May 31, 2016 has net assets of approximately \$28 million. The monthly income statement shows total revenues of approximately \$240,000, being approximately \$30,000 ahead of budget, and expenses of approximately \$266,000, being \$15,000 over budget, for the month of June. The year to date income statement shows revenues are ahead of budget by \$337,185, and operating expenses are below budget by \$18,475. When taking into account special project grants, depreciation and non-recurring items, net income for the year is a negative \$64,630.

There being no further questions or comments, Ms. McDuffie directed that the report be received and filed.

At this point in time, Mr. Weinstein left the meeting.

MANAGEMENT TEAM REPORTS

Net Zero Energy Presentation & Funding Approval Resolution. Mr. Weathers presented members with an update on the Net Zero Energy Building project, including completed action items to date, and proposed actions items, costs related thereto, and a timeline for completion. Mr. Weathers described actions related to the next stages of the project, which includes a request for the ECIDA to approve \$1,500,000 in spending to allow for site acquisitions, final design and construction management, and various administration, testing, permitting and other related construction activity costs.

Mr. Elsenbeck queried as to whether this is a market demand for a net zero energy building, and if there was, further queried as to why the private sector is not already investing in such a project.

Mr. Mesiah expressed his concern that there may not be people who have the skills to work in such a facility, and stated his belief that the Agency should ensure that there are people trained to work in this area.

Mr. Poloncarz thanked the ECIDA staff for their efforts to date, noting that this is a cutting edge project. Mr. Poloncarz moved, and Mr. Pridgen seconded, to approve of the funding request. Mr. Emminger then stated that he supports the project but also stated that he is concerned about the financial visibility of the project. Ms. McDuffie called for the vote, and the following resolution was then unanimously approved.

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("AGENCY") AUTHORIZING (i) THE ALLOCATION OF \$1,500,000 FOR SITE ACQUISITION, ADMINISTRATION, TESTING, PERMITTING, DEMOLITION, AND DESIGN AND CONSTRUCTION MANAGEMENT SERVICES; (ii) ISSUANCE OF A REQUEST

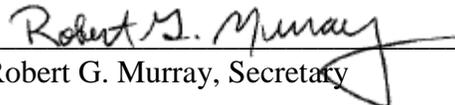
FOR QUALIFICATIONS TO PROVIDE DESIGN AND CONSTRUCTION MANAGEMENT SERVICES AND PERMITTING THE ENGAGEMENT OF A QUALIFIED DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FIRM; AND (iii) AGENCY STAFF TO SOLICIT GRANT FUNDING OPPORTUNITIES AND OTHER FUNDING RELATED OPPORTUNITIES FOR PURPOSES OF CONSTRUCTING AND OPERATING A ZERO NET ENERGY FACILITY

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Assistant Treasurer Banking Resolution. Upon motion by Mr. Poloncarz and seconded by Mr. Brown, a motion to appoint Bradley Bach as Assistant Treasurer was unanimously approved.

There being no further business to discuss, upon motion made by Mr. Brown and seconded by Mr. Mudie, Ms. McDuffie adjourned the meeting at 12:32 p.m.

Dated: June 22, 2016


Robert G. Murray, Secretary