



Policy Committee

June 3, 2021
9:00 a.m.

Via Conference Call & Live Streaming

1. Call Meeting to Order
2. Approval of the May 13, 2021 Policy Committee Minutes (Pages 2-6)
3. Project Matrix (Page 7)
4. Solar PILOTS (Pages 8-17)
5. MWBE Update
6. Adjournment – Next Meeting **July 1, 2021 at 9:00 a.m.**

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

- MEETING:** May 13, 2021, at Erie County Industrial Development Agency (the “ECIDA” or “Agency”), meeting held via phone conference. Governor Cuomo’s Executive Order 202.1, as amended from time to time, issued in response to the Coronavirus (COVID-19) crisis, suspended Article 7 of the Public Officers Law to the extent necessary to permit any public body to take actions without permitting in public in-person access to such meetings and authorized such meetings to be held remotely by conference call or other similar service, provided the public has the ability to view or listen to such proceedings and that the meeting is recorded and transcribed.
- LIVE STREAMED:** This meeting is being live-audio streamed and made accessible on the Agency’s website at www.ecidany.com.
- PRESENT:** Denise Abbott; April Baskin; Rev. Mark Blue; Johanna Coleman; Hon. William Krebs; Richard Lipsitz; Brenda W. McDuffie; Glenn Nellis; Laura Smith; David State; Lavon Stephens and Maria Whyte
- EXCUSED:** Bryon W. Brown; Richard Cummings and Colleen DiPirro
- OTHERS PRESENT:** John Cappellino, President & CEO; Mollie Profic, Chief Financial Officer; Karen M. Fiala, Vice President/Secretary; Atiqa Abidi, Assistant Treasurer; Jamee Lanthier, Compliance Officer; Brian Krygier, Systems Analyst; Carrie Hocieniec, Administrative Coordinator; Beth O’Keefe, Business Development Officer; Robbie Ann McPherson, Director of Marketing and Communications; and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC
- GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist; Alex Carducci on behalf of the City of Buffalo; Peter Wilson and Adrienne Schreier on behalf of 283 Ship Canal/Sonwil Distribution; Eric Ekman and Maria Owens on behalf of MCG Real Estate Holdings; Kevin McAuliffe and Karen D’Antonio on behalf of Barclay Damon; and Jim Loewke on behalf of Loewke Brill Consulting Group

There being a quorum present at 9:05 a.m., the Meeting of the Policy Committee was called to order by Mr. Lipsitz.

MINUTES

The minutes of the April 15, 2021 Policy Committee meeting were presented. Upon motion made by Mr. Nellis to approve of the minutes, and seconded by Ms. McDuffie, the aforementioned Policy Committee meeting minutes was unanimously approved.

At this point in time, Maria Whyte joined the meeting.

PROJECT MATRIX

Mr. Cappellino reviewed the Agency's Project Matrix. Mr. Lipsitz directed that the report be received and filed.

PROJECT PRESENTATIONS

283 Ship Canal Parkway, LLC, 283 Ship Canal Parkway, Buffalo, New York 14218. Mr. Cappellino presented this proposed sales tax, mortgage recording tax and real property tax abatement benefits project involving the construction of a 335,000 sq. ft. warehouse/distribution facility. The building would allow Sonwil to competitively price their warehouse/distribution services and not only accommodate current customer demand, but also grow such current customers' presence in the region while growing the amount of logistical services to prospective customers and industries. Mr. Cappellino noted that the Committee is only approving the sales tax and mortgage recording tax benefits today. The Committee will take action on a later date on a custom PILOT, upon implementing deviation procedures at the ECIDA June 2021 meeting.

Ms. Smith spoke in favor of the Project.

Ms. Baskin spoke in favor of the Project, but expressed concern that the MWBE section in the application was not filled-in, and asked the Company to describe its MWBE vendor process and practice. Mr. Wilson spoke on behalf of the applicant and confirmed the applicant's commitment to EEO hiring practices and use of MWBE contractors. Ms. Baskin stated she cannot support the project until the application is properly completed and responsive with respect to the foregoing.

Mr. Blue agreed with Ms. Baskin that the use of MWBE contractors must be confirmed within the application. Ms. McDuffie recommended that staff work with applicant to obtain applicant's MWBE commitment for clarification. Mr. Cappellino suggested staff update the applicant's MWBE commitment to the application prior to consideration by the Board.

Mr. Cappellino stated that, in addition to the foregoing, in exchange for providing the sales tax and mortgage recording tax abatement benefits, the approval of this project will be conditioned upon adherence to certain material terms and conditions with respect to the potential modification, recapture and/or termination 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 = \$52,284,244 85% = \$44,441,607
Employment	Coincides with 10-year PILOT	Projected = 76 85% = 64 Recapture Employment = 64
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Coincides with 10-year PILOT	Adherence to policy
Unpaid Tax	Coincides with 10-year PILOT	Adherence to policy
Recapture Period	10-year PILOT term	Recapture of state and local sales taxes, mortgage recording tax and real property taxes

Ms. Coleman moved and Mr. Blue seconded to recommend the project for sales tax and mortgage tax benefits contingent upon applicant's submission of an MWBE utilization commitment plan. Mr. Lipsitz called for the vote and the project was then unanimously approved.

MCG Real Estate Holdings, LLC, 293 Grote Street, Buffalo, New York 14207. Ms. Fiala presented this proposed sales tax, mortgage recording tax and real property tax abatement benefits project involving the adaptive reuse of the former Buerk Tool facility. The building has been vacant for 2 years and underutilized a total of 18 years. The building, once redeveloped, will house 33 apartments. The developer has indicated 12 of the one-bedroom units will be offered at 80% of the adjusted median income.

Ms. McDuffie spoke in favor of the project. Ms. Whyte also spoke in favor of the project.

Mr. Cappellino stated that in exchange for providing the sales and use tax, mortgage recording tax exemption 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 the potential modification, recapture and/or termination 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 = \$8,258,268 85% = \$7,019,527
Employment	Coincides with 10-year PILOT	Create 85% of Projected Projected = 1 PT 85% = 1 PT Recapture Employment = 1 PT
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Coincides with 10-year PILOT	Adherence to policy
Unpaid Tax	Coincides with 10-year PILOT	Adherence to policy
Recapture Period	Coincides with 10-year PILOT	Recapture of state and local sales taxes, mortgage recording tax and real property taxes

Ms. McDuffie moved and Ms. Whyte seconded to recommend the project as proposed be forwarded to the members of the ECIDA for approval. Mr. Lipsitz called for the vote and the project was then unanimously approved.

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

LOCAL LABOR WAIVER STEEL WINDS, LLC

Mr. Cappellino reviewed the Company’s request for a waiver from the Agency’s local labor policy with respect to use of local labor and presented the results of the analysis of the request as submitted by the Agency’s consultant, Loewke Brill Consulting Group, Inc. General discussion ensued.

Mr. Lipsitz asked for a motion to recommend to the Board that the waiver request be granted provided the Company agrees to facilitate the training and certification of local workers with respect to the project’s manufacturing vendor’s required vendor training.

Ms. McDuffie moved and Mr. Nellis seconded to recommend the approval of a waiver to the local labor policy. Mr. Lipsitz called for the vote and the waiver was then unanimously approved.

SOLAR PILOTS

Mr. Cappellino reviewed recent amendments to the New York IDA Act and the New York Real Property Tax Law that encourage renewable energy project establishment and encourage IDAs to facilitate private investment and establishment of renewable energy system

projects by providing financial assistance and real property tax abatements related to same. Mr. Cappellino noted the Agency will be reviewing its Uniform Tax Exemption Policy related to same, and will provide recommendations and updates to the committee in the near future.

MWBE UPDATE

Ms. Whyte provided members with an update on the MWBE working committee.

There being no further business to discuss, Mr. Lipsitz adjourned the meeting at 10:17 a.m.

Dated: May 13, 2021

Karen M. Fiala, Secretary

Project Matrix/Material Factors/Clawbacks

Count	Project Name	Approval Date	Project Amount	Investment	Jobs Retained	Job Creation	Jobs Created	Clawback	Local Labor	Length of Term	Additional Findings	*Incentive Amount	Adaptive Reuse	Pay Equity
	1 72 East Niagara, LLC	Jan-21	\$2,835,736	85% threshold \$2,411,225	17	85%-New 2 jobs	3	Yes	Yes	Period of PILOT 7 Years		\$146,000	Adaptive Reuse	Yes
	1 Calspan Corporation	Jan-21	\$13,500,000	85% threshold \$11,475,000	143	85%-New 17 jobs	20	Yes	Yes	Period of PILOT 10 Years		\$599,000		Yes
	1 Thermo Fisher - North Expansion	Jan-21	\$85,000,000	85% threshold	807	85%-New 51 jobs	60	Yes	Yes	Period of PILOT 10 Years		\$2,912,000		Yes
	1 Pine Pharmaceuticals, LLC	Jan-21	\$8,615,000	85% threshold \$7,322,750	76	85%-New 34 jobs	40	Yes	Yes	Period of PILOT 10 Years		\$1,376,937		Yes
	1 Suero Real Estate	Jan-21	\$19,000,000	85% threshold \$16,150,000	5	85%-New 38 jobs	45	Yes	Yes	Period of PILOT 10 Years		\$3,392,250		Yes
	1 Eastman Machine	Feb-21	\$1,665,000	85% threshold \$1,415,250	126	85%-New 2 jobs	3	Yes	Yes	Period of PILOT 7 Years		\$124,588		Yes
	1 Time Release Science	Feb-21	\$30,500,000	85% threshold \$25,925,000	103	85%-New 17 jobs	20	Yes	Yes	Period of PILOT 10 Years	Amendatory Inducement	\$4,591,400		Yes
	1 Surmet Ceramics Corp.	Mar-21	\$11,500,000	85% threshold \$9,775,000	13	85%-New 15 jobs	18	Yes	Yes	2 Years after Project Completion		\$65,625		Yes
	1 Terzo Development	Mar-21	\$3,050,000	85% threshold \$2,592,000	0	85%-New 1 jobs	1	Yes	Yes	Period of PILOT 7 Years		\$304,125	Adaptive Reuse	Yes
	1 BLD VII, LLC	Apr-21	\$14,570,786	85% threshold \$12,385,168	0	85%-New 35 jobs	41	Yes	Yes	Period of PILOT 10 Years		\$4,435,879		Yes
	1 283 Ship Canal Parkway, LLC	May-21	\$52,284,244	85% threshold \$44,441,607	0	85%-New 64 jobs	76	Yes	Yes	Sales and Mortgage tax		\$3,422,973		Yes
	1 MCG Real Estate Holdings, LLC	May-21	\$8,258,268	85% threshold \$7,019,527	0	85%-New 1 jobs	1	Yes	Yes	Period of PILOT 7 Years		\$619,250	Adaptive Reuse	Yes
Count			Project Amount	Investment	Jobs Retained	Job Creation	Jobs Created					Incentive Amount		
3			\$14,145,004		8,258,285		8,258,272					\$1,069,375		

Adaptive Reuse														
2021 Sub Total	3		\$14,145,004		8,258,285		8,258,272					\$1,069,375		

2021 Total	12		\$250,780,034		1,290		328					\$21,990,027		
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MEMORANDUM

May 13, 2021

To: Members of the Erie County Industrial Development Agency Policy Committee

Re: Amendments to NY IDA Statute and NY Real Property Tax Law affecting taxation of Solar and Wind Farms¹

Sections 854, 858, and 859-a of the New York General Municipal Law (GML) and Sections 487 of the New York Real Property Tax Law (RPTL) were recently amended, and a new Section 575-b was added to the RPTL, all such changes impacting how solar and wind farms can be assessed and confirming that Industrial Development Agencies (IDA) can provide financial assistance to such projects.

In general, this legislation does three things. First, it tightens the notice requirements that local taxing jurisdictions must receive under the RPTL section 487 real property tax exemption for certain energy systems, such as wind and solar. Secondly, it standardizes the methodology for the assessment of solar and wind projects. Lastly, it makes clear that renewable energy is among the types of economic development that IDAs have the authority to support.

This legislation appears to be a clear attempt to assist incentivizing solar and wind projects in order to meet New York State's established goal of 70% renewable electricity by 2030, which will require substantial development of both large and small-scale renewable energy projects.

RPTL Section 487 amendments.

- Section 487 of the RPTL provides a 100% real property tax exemption, for a 15-year benefit term, for certain renewable energy system projects, including solar and wind. Local taxing jurisdictions, namely a County, City, Town, Village and School District, can opt-out of the exemption. If the local jurisdictions do not opt-out, then the 15-year exemption applies to the value of the solar or wind improvements. However, the local jurisdictions may require a municipal PILOT and must respond within 60 days to a notice from a developer stating that the developer intends to require a PILOT or the jurisdiction will be foreclosed from being able to require a PILOT during the 15-year exemption period. The amendment explicitly requires written notice be sent to the chief official of each taxing jurisdiction with specific references to Section 487.

¹ Article 7 Revenue Bill Part X (S2509-C/A3009-C). Signed 4/19/21 Chapter 59 L. of 2021.

New RPTL Section 575-b

- The second set of amendments adds a new Section 575-b to the RPTL to standardize the wind and solar project assessment method. Wind and solar projects face inconsistent local taxation methods, which directly ties to the PILOT negotiations under both a 487 PILOT and an IDA PILOT. Without having a consistent and appropriate assessment method, there is uncertainty to what the limits of a PILOT can be given that PILOTS cannot exceed what the property taxes would have been but for the PILOT, under both 487 PILOTS and IDA PILOTS. The new section requires the use of a discounted cash flow method for assessment purposes. The New York State Tax Department must establish the specific methodology and discount rate to be used. In general, standard assessment methods employed by assessors are (i) comparables, (ii) cost basis and (iii) discounted cash flow. This amendment to the RPTL mandates that discounted cash flow be used and requires the New York State Tax Department to publish a specific method for how such a discounted cash flow method will be used, including the discount rate.

GML Amendments

- The last set of amendments are to the IDA Act in the GML. There are several reasons why a solar and wind project would want to seek a real property tax exemption from an IDA rather than from a taxing jurisdiction under RPTL 487 such as opt outs, the ability for IDA PILOTS to be longer than 15 years, negotiating with one body (a single IDA) versus at least 3 taxing jurisdictions, IDA facilitated mortgage recording tax exemption availability, and to a limited extent sales tax exemption. To date, approximately 20% of the local taxing jurisdictions have opted-out of the 487-exemption program. This amendment specifically adds solar and wind renewable energy projects to the definition of the defined term “Project” in the IDA statute, ending any ambiguity as to whether an IDA can assist such projects. This amendment also provides that “green” attributes of a renewable energy system project can be considered in the required cost benefit analysis.

ECIDA Policy Considerations

- ECIDA should discuss its role in promoting renewable energy projects and determine whether we should establish a Renewable Energy System policy to standardize its approach to such projects, and if so:
 - ECIDA should consider the role of “decommissioning bonding” in its approval process
 - ECIDA should consider requiring evidence of “host-community” support as a condition of application submission
 - ECIDA should consider the impact that renewal energy system projects can have on prime agricultural land
 - ECIDA should determine standard PILOT fee based on energy production and determine standard terms and length of PILOTS

ECIDA SOLAR POLICY DISCUSSION



Role in Promoting Renewable Energy

- NYS goal of achieving 70% renewable electricity production by 2030
- NYS recent budget amended GML to define renewable energy projects as a “project” for IDA purposes
- IDA’s in NYS are being asked to provide incentives to solar projects
- Generally, 2 types of projects
 - Community Solar (Distributed Energy Resource) less than 5 MW
 - Large Scale Renewable more than 5 MW (NYS approval process)

ECIDA SOLAR POLICY DISCUSSION



Community Solar benefits customers that subscribe to purchase renewable energy

A 5 MW solar farm on average takes up 30 – 40 acres of property

Costs to install can vary depending on project site, interconnection costs etc.

One MW of Solar on average cost about \$1 million to install

More info NYSERDA website <file:///C:/Users/icappell/Downloads/Solar%20Basics.pdf>



Solar electric panels are installed off site in sunny locations to produce renewable energy for subscribers.

Any utility customer (home or business) in the area can subscribe.



Each subscriber's utility bill is credited accordingly.

ECIDA SOLAR POLICY DISCUSSION



NYS RPTL 487

- NYS tax program which provides a 100% 15-year real property tax exemption for renewable energy projects
 - Local taxing authorities can opt out of the RPTL 487
 - Under opt out - projects pay full taxes
 - Local taxing authorities when notified of a project can request a PILOT
 - In this instance local taxing authority can negotiate a PILOT directly with developer
 - Many communities in addition to a PILOT will ask for a CBA (Community Benefit Agreement)
 - CBA's are typically lump sum payments used to fund specific programs or projects
 - Community negotiated PILOT's are not required to or typically do not have any of the IDA requirements like Local Labor, etc.

ECIDA SOLAR POLICY DISCUSSION



IDA PILOT'S

- In some cases, developers will approach an IDA for a PILOT and not utilize the RPTL 487
 - Reasons to Utilize an IDA PILOT
 - Local taxing authorities may have opted out of RPTL 487
 - Looking for a longer PILOT term than 15 years
 - Easier to negotiate with 1 entity (IDA) instead of multiple taxing authorities
 - Cost certainty standard PILOT schedules
 - Many IDA's in NYS are providing PILOTS to solar projects
 - There have been over 150 IDA PILOTS on solar projects in NYS

ECIDA SOLAR POLICY DISCUSSION



- IDA PILOT'S
 - PILOT schedules
 - Most IDA's in NYS charge a per MW PILOT fee
 - Typically, there is an annual escalator (average 2%/year)
 - PILOT terms range from 15 years up to 25 years
 - Longer PILOTs asked for because power purchase contracts/financing up to 25 years
 - PILOT Fees
 - Have ranged from as low as \$1,000/MW as high as \$10,000/MW
 - For 5MW facilities average range between \$4,500 - \$8,000
 - Typical average \$5,000 - \$5,500
 - Many IDA PILOTs also have an associated CBA negotiated with the host community

ECIDA SOLAR POLICY DISCUSSION

ECIDA Policy Considerations

- Local and Community Approvals
 - SEQRA, planning and site plan
 - Evidence of negotiated CBA
- Decommissioning
 - Solar Panels and other installations, cabling, piers, piles
 - Panels can present environmental hazard
 - Installation removal can be expensive
 - Sites to be returned to pre-project state
 - Require Bonding or other accommodations for decommissioning costs



ECIDA SOLAR POLICY DISCUSSION



ECIDA Policy Considerations

- Agricultural Land Impacts
 - Determination of agricultural lands impact – Erie County
 - Require CBA with Erie County for project that impact agricultural lands
 - Erie County to use CBA to support county agricultural programming
- PILOT Fee and Term
 - Determine policy for standard PILOT fee
 - Determine policy for standard PILOT term (IDA reporting requirements for the length of PILOT)
 - Determine policy for standard Escalator
- Require UTEP amendment
 - Other County IDA's (?)

ECIDA SOLAR POLICY DISCUSSION



ECIDA Procedural and Implementation Considerations

- Evaluative Criteria
 - Minimal job creation/ temporary construction jobs (local labor requirement)
 - State’s Renewable Energy Goals
- Local Opposition to Projects
- Cost Benefit Analysis
 - Local assessment – determine PILOT savings
 - PILOT not based on property value/based on energy production
- Sales Tax Benefits
 - NYS and Erie County exempted solar production equipment
 - Potential for non-production equipment sales tax exemption request
 - Fencing, paving, site work etc.