

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

DATE AND PLACE: October 26, 2022, at Center of Excellence in Bioinformatics and Life Sciences (CBLS), 701 Ellicott Street, Conference Room B2-205, Second Floor, Buffalo, New York 14203

PRESENT: Denise Abbott, Hon. Joseph Emminger, Hon. Howard Johnson, Tyra Johnson, Hon. Brian Kulpa, Richard Lipsitz, Jr., Denise McCowan, Brenda W. McDuffie, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen and Kenneth A. Schoetz

EXCUSED: Hon. Diane Benczkowski, Rev. Mark E. Blue, Hon. Bryon W. Brown, James Doherty, Dottie Gallagher, Michael P. Hughes, Hon. Glenn R. Nellis and Paul Vukelic

OTHERS PRESENT: John Cappellino, President & CEO; Beth O’Keefe, Vice President of Operations/Secretary; Mollie Profic, Chief Financial Officer; Atiqa Abidi, Assistant Treasurer; Gerald Manhard; Chief Lending Officer/Secretary; Andrew Federick, Business Development Officer; Soma Hawramee, Compliance Portfolio Manager, Brian Krygier, Director of Information Technology; Carrie Hocieniec, Operations Assistant/Assistant Secretary; Talia Johnson-Huff, Project Manager; Laurie Hendrix, Administrative Coordinator; Robert G. Murray, Esq., General Counsel/Harris Beach PLLC and Terrence M. Gilbride and Christopher C. Canada, Bond Counsel/Hodgson Russ LLP

GUESTS: David Brown and John Fraser on behalf of Community Preservation Partners; Stephen Yonaty on behalf of Cannon, Heyman & Weiss representing OAHS Tonawanda TC, LLC; Zachary Evans and Thomas Baines on behalf of Erie County; Bukola Millia on behalf of Workforce Investment Board and J. Dale Shoemaker on behalf of Investigative Post

There being a quorum present at 12:03 p.m., the meeting of the members of the Erie County Industrial Development Agency (the “ECIDA” or “Agency”), was called to order by the Chair, Ms. McDuffie.

MINUTES

The minutes of the September 28, 2022 meeting of the members were presented. Ms. Abbott moved and Mr. Emminger seconded to approve of the minutes. Ms. McDuffie called for the vote and the minutes were unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic presented the September 2022 financial report. The balance sheet shows the month ended with total assets of \$30.5M and net assets of \$20.6M. There were increases of approximately \$330,000 in both restricted cash and funds held on behalf of others during the month, indicting PILOT collections added to a PIF Fund. There weren't any other major shifts on the balance sheet line items from August. The monthly income statement shows net income of \$141,000 for September. Operating revenue of \$352,000 was above the monthly budget by \$123,000, due mainly to \$280,000 of administrative fees collected during the month. Operating expenses were \$206,000 and overall below our monthly budget by \$22,000. After depreciation, there was net income of \$141,000 for the month. The year-to-date Income Statement shows revenues of \$1.8M, including administrative fee revenue of \$1.1M. We are at 60% of our 2022 administrative fee budget through September. Expenses of \$2.1M are in line with the budget. Special project grant revenue nets to \$190,000. After strategic investments and depreciation, there is currently a net loss of \$191,000 for the year. Ms. McDuffie directed that the report be received and filed.

Finance and Audit Committee Update: Ms. Profic advised that the Committee met on October 17 and reviewed and recommended that the 2023 budgets be approved, and also reviewed and recommended for approval the two bond financing projects that will be on today's meeting agenda.

A. 2023 Budget Timetable. Ms. Profic reviewed the 2023 proposed budget review process and confirmed that two Q&A sessions were held since the last Board.

B. Review of Proposed 2023 Operating and Capital Budget. Ms. Profic reviewed the proposed 2023 budget including a narrative discussing budget methodology and substantial changes from the prior year budget and reviewed the operational portion of the budget. She stated that compared to the 2022 budget, we are looking at slight increases for both operating revenues and expenses in 2023. Operating revenues are budgeted at \$2.8M, which includes \$1.8M of administrative fees. Ms. Profic is projecting around \$1.36M of administrative fee revenues for 2023. Despite the projected shortfall this year, the Agency has a strong pipeline of projects heading into the end of 2022 and early 2023. Ms. Profic stated that the total operating expenses are budgeted at \$2.8M, a less than 1% increase over the 2022 budget. There is a budgeted operating loss of about \$20,000, which takes into account our approaching office lease renewal and conservative budgeting for insurance renewals. Ms. Profic reviewed the proposed and potential uses of funds already on hand for special projects. The reserves for future projects are noted simply for the possibility of future projects, should the opportunity arise. Including all of these possibilities, the bottom line budgeted net loss is \$2.9M. She noted there haven't been any changes to the budgeted figures since we reviewed them last month. Ms. Profic then reviewed the 3-year forecast as required by the Authorities Budget Office and outlined the proposed 5-year capital budget, including IT and facilities at 143 Genesee and 95 Perry. She noted the Agency has \$180,000 included in the budget for 95 Perry for potentially expanding the large conference room. The Finance & Audit Committee voted on October 17 to recommend approval of the proposed budget as presented.

Mr. Johnson moved and Ms. Abbott seconded to approve of the ECIDA 2023 Budget. Ms. McDuffie called for the vote and the ECIDA 2023 Budget was unanimously approved.

2022 Tax Incentive Induced/Closing Schedule. Mr. Cappellino presented this report to the members. Ms. McDuffie directed that the report be received and filed.

At this point in time, Ms. Johnson joined the meeting.

General discussion ensued about ability to attract minority businesses to utilize ECIDA Financial Assistance.

Policy Committee Update. Mr. Lipsitz provided members with an update on the most recently completed Policy Committee meeting, noting both projects on today's agenda were recommended for approval by the Policy Committee. Mr. Lipsitz also confirmed that the Policy Committee has finalized its Minority Inclusion PILOT (the "MI PILOT"). Mr. Cappellino noted the ECIDA will be holding an educational session on the MI PILOT. Mr. Poloncarz thanked the ECIDA and the Policy Committee for developing the MI PILOT and is looking forward to receiving the final proposal at the next meeting. Ms. McDuffie directed that the report be received and filed.

INDUCEMENT RESOLUTIONS

Ellicott Park Townhomes Community Partners, L.P., 10 Durham Court (aka 221 and 291 William Street), Buffalo, New York. Ms. O'Keefe reviewed this proposed federal tax-exempt bond, sales tax exemption and mortgage recording tax exemption benefit project which consists of the renovation and equipping of a mixed-use facility consisting of a 220-unit family Section 8 affordable housing community located in 21 one- and two-story wood frame with brick façade townhouse style buildings on two noncontiguous parcels totaling 8.9 acres.

The Project's cost benefit ratio was presented to and reviewed by the members present and the costs of incentives so applied for, the anticipated new tax revenues to be generated by the Project, as well as the Project's contemplated community benefits were discussed and considered.

As a condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company covenants and agrees and understands that it must, subject to potential modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, through the conclusion of the later of two (2) years following either (x) the construction completion date, or (y) 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 \$46,464,650 (which represents the product of 85% multiplied by \$54,664,295, being the total project cost as stated in the Company's application for Financial Assistance).

- (ii) Employment Commitment – that there are at least two (2) existing full time equivalent (“FTE”) and one (1) existing 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”); and
- the number of current FTE employees in the then current year at the Facility; and
 - that within two years of Project Completion, the Company has maintained and created FTE employment at the Facility equal to 4 FTE and one (1) existing part time equivalent (“PTE”) employees [representing the sum of (x) 2 Baseline FTE and one (1) existing part time equivalent (“PTE”) and (y) 2 FTE employees, being the product of 85% multiplied by 3 (being the 3 new FTE employee positions proposed to be created by the Company as stated in its Application)]. In an effort to confirm and verify the Company’s employment numbers, the Issuer requires that, at a minimum, the Company provide employment data to the Issuer on a quarterly basis, said information to be provided on the Issuer’s “Quarterly Employment Survey” form to be made available to the Company by the Issuer.
- (iii) Local Labor Commitment – that the Company adheres to and complies with the Issuer’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 Issuer’s Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Issuer’s Unpaid Real Property Tax Policy.

General discussion ensued. Mr. Pridgen and Mr. Johnson expressed concerns that tenants will not be returned to their same unit upon rehabilitation. Mr. Brown, on behalf of the company, responded that the company will guarantee that residents will return to their same unit. Further discussion was held regarding rent arrearages.

Mr. Poloncarz moved to accept the bond resolution provided a covenant is inserted into the bond or project documents requiring that residents be returned to their units, upon rehabilitation, unless that tenant agrees to move to a different unit, under his or her own volition, and in addition, provided further, that the Company submit confirmation, in a form acceptable to Agency staff and Agency’s general counsel, that seller has agreed to not pursue rent arrearages from current tenants, said confirmation to be provided to and accepted by Agency staff prior to the Company’s acquisition of title to the real property and in the event said confirmation is not provided or not provided in acceptable form, the bond resolution shall be annulled and of no further force or effect. Mr. Kulpa seconded Mr. Poloncarz’s motion to approve the Project. Ms. McDuffie called for the vote and the following resolution was unanimously approved:

RESOLUTION (A) AUTHORIZING THE ISSUANCE, AND SALE OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY MULTIFAMILY HOUSING REVENUE BONDS (ELLCOTT PARK TOWNHOMES COMMUNITY PARTNERS, LP PROJECT), IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$33,000,000; (B) THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AND (C) MAKING A FINDING IN COMPLIANCE WITH THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT.

OAHS Tonawanda TC LLC, 5 Main Street, Tonawanda, New York. Ms. O’Keefe reviewed this proposed federal tax-exempt bond and mortgage recording tax exemption benefit project which consists of the acquisition, renovation and equipping of a mixed-use facility consisting of 100 units (plus one super’s unit) targeting senior households earning 60% AMI or less.

Mr. Yonaty, on behalf of the Company, confirmed that tenants will be removed from the units only during the day during construction activities.

The Project’s cost benefit ratio was presented to and reviewed by the members present and the costs of incentives so applied for, the anticipated new tax revenues to be generated by the Project, as well as the Project’s contemplated community benefits were discussed and considered.

As a condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company covenants and agrees and understands that it must, subject to potential modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, through the conclusion of the later of two (2) years following either (x) the construction completion date, or (y) 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 \$21,284,612 (which represents the product of 85% multiplied by \$25,040,720, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least three (3) existing full time equivalent (“FTE”) employees and one (1) existing part time equivalent (“PTE”) employee located at, or to be located at, the Facility as stated in the Company’s application for Financial Assistance; and
 - the number of current FTE employees in the then current year at the Facility; and
 - that within two years of Project Completion, the Company has maintained employment at the Facility equal to 3 FTE employees and 1 PTE employee. In an effort to confirm and verify the Company’s employment numbers, the Issuer requires that, at a minimum, the Company provide employment data

to the Issuer on a quarterly basis, said information to be provided on the Issuer’s “Quarterly Employment Survey” form to be made available to the Company by the Issuer.

- (iii) Local Labor Commitment – that the Company adheres to and complies with the Issuer’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 Issuer’s Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Issuer’s Unpaid Real Property Tax Policy.

Mr. Poloncarz moved and Mr. Lipsitz seconded to approve the Project. Ms. McDuffie called for the vote and the following resolution was unanimously approved:

RESOLUTION (A) AUTHORIZING THE ISSUANCE, AND SALE OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY MULTIFAMILY HOUSING REVENUE BONDS (OAHs TONAWANDA TC LLC PROJECT), IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$13,000,000; (B) THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AND (C) MAKING A FINDING IN COMPLIANCE WITH THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT.

MANAGEMENT TEAM REPORTS

Mr. Cappellino introduced Ms. Talia Johnson-Huff, as the new Agency Project Manager, to the members.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 1:15 p.m.

Dated: October 26, 2022



Elizabeth A. O’Keefe, Secretary