

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

DATE AND PLACE: October 23, 2024, at the Erie County Industrial Development Agency, 95 Perry Street, 4th Floor Conference Room, Buffalo, New York 14203

PRESENT: Denise Abbott, Rev. Mark Blue, Patrick Boyle, Hon. Joseph H. Emminger, Hon. John J. Gilmour, Michael P. Hughes, Hon. Brian Kulpa, Richard Lipsitz, Jr., Brenda McDuffie, Glenn R. Nellis, Hon. Brian Nowak, Hon. Christopher P. Scanlon and Kenneth A. Schoetz

EXCUSED: James Doherty, Thomas R. Emmerling, Dottie Gallagher, Tyra Johnson and Hon. Mark C. Poloncarz

OTHERS PRESENT: John Cappellino, President & CEO; Beth O’Keefe, Vice President of Operations; Mollie Profic, Chief Financial Officer; Atiqa Abidi, Accounting Manager; Grant Lesswing, Director of Business Development; Daryl Spulecki, Assistant Loan Manager; Carrie Hocieniec, Operations Assistant/Assistant Secretary; Soma Hawramee, Compliance Portfolio Manager; Brian Krygier, Director of Information Technology; Michelle Moore, Compliance Associate; Elizabeth Hughes, General Counsel/Harris Beach PLLC and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC

GUESTS: Zachary Evans on behalf of Erie County; Daniel Castle on behalf of Erie County; Yessica Vasquez on behalf of City of Buffalo; Jonathan Epstein on behalf of the Buffalo News; J. Dale Shoemaker on behalf of Investigative Post; and Michelle Siefert and Derek Litan on behalf of Hanes Supply Company

There being a quorum present at 12:00 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 25, 2024, meeting of the members were presented. Mr. Kulpa moved, and Mr. Blue 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 financial reports. The balance sheet shows that the IDA ended the month with total assets of \$36.4M and net assets of \$19.6M. Overall assets and liabilities both increased slightly during the month. The monthly income statement shows a net income of \$3,000 in September. Operating revenue of \$195,000 was below the monthly budget by \$19,000, due mainly to administrative fees below our monthly budget. Operating expenses of \$232,000 were \$24,000 below our monthly budget. The variance in salaries and benefits is mostly due to differences in benefit costs from budget. After net non-operating revenue of \$44,000, there was net income of \$3,172 for the month. The year-to-date income statement shows operating revenues of \$1.7M, including administrative fee revenue of \$1.06M. We are at 59% of our annual budget through September. Other revenue lines are in line with the YTD budget. Operating expenses of \$2.3M are \$107,000 below budget. The negative \$91,000 variance on the salaries & benefits line is mostly due to the budget including room for performance incentives. Professional services are about \$31,000 below budget, due to lower than expected legal and consulting costs. Public Hearing and marketing is \$21,000 above budget due to additional marketing costs for RCP. Net special project grant expenses are \$20,000, and strategic initiatives year to date total \$326,000. After net non-operating revenue of \$354,000, there is currently a net loss of \$563,788 for the year. Ms. McDuffie directed that the report be received and filed.

Finance and Audit Committee Update. Ms. Profic advised that the committee last met on September 17 and noted we are coming to the end of our 2025 budget process. The Board will be asked to vote on the 2025 budget today in order to meet the November 1 ABO deadline. Mr. Lipsitz directed that the report be received and filed.

Approval of 2025 Proposed Budget. Ms. Profic reviewed the Agency's 2025 proposed operating and capital budget. Ms. Profic reviewed the budget in detail at the last board meeting but for the benefit of the board members who could attend the previous meeting, she provided a high-level review of the budget. She reviewed the narrative discussing budget methodology and substantial changes from the prior year as well as the operational portion of the budget. Ms. Profic stated that when compared to the 2024 budget, we are looking at a 12% (\$336,000) increase for operating revenues and 4% (\$127,000) increase in expenses in 2025. Operating revenues are budgeted at \$3.1 million, which includes \$1.8 million of administrative fees. She further advised that the Agency is projecting around \$1.6 million of administrative fee revenues for 2024. The main reasons for the increase in the 2025 budget are an increase in affiliate management fees from ILDC and an increase in interest income. Total operating expense are budgeted at \$3.0 million, a 4% increase over the 2024 budget. In addition to budgeted increases of salaries and benefits costs, building operating costs is budgeted to increase due to the Agency's share of CAM charges at 95 Perry Street. Before depreciation and special projects, we are budgeting net income of \$97,500. She reviewed the proposed and potential uses of funds already on hand for special projects. Including all of these possibilities, the bottom line budgeted net loss is \$437,772. There have not been any changes to the budgeted figures since they were reviewed last month.

Ms. Profic further reviewed the 3 year forecast as required by the Authorities Budget Office. She outlined the proposed 5-year capital budget, including IT and facilities at 143 Genesee

and 95 Perry. The Finance & Audit Committee voted on September 17 to recommend approval of the proposed budget as presented.

Mr. Nellis moved and Mr. Blue seconded to approve of the 2025 proposed Budget. Ms. McDuffie then called for the vote and the motion was unanimously approved.

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

Governance Committee Update. At this point in time, Mr. Murray left the meeting given the topic at hand. Ms. Profic then advised the Board that the Governance Committee met on October 18 to review the recommendations for professional legal services. She advised this was the culmination of about a 4-month process, as documented below:

- RFP developed with feedback from staff, Governance Committee, prior RFP
- RFP distributed in July via multiple channels to reach as many firms as possible
- 5 proposals were received – firms were invited to propose on any combination of positions, however no contingent proposals were permitted
- Staff committee reviewed and scored proposals based on the qualifications and experience of assigned attorneys as well as the firm overall, proposed hourly rates/fees, and M/WBE development.
- After the initial scoring, the committee interviewed 3 firms
- After the interviews were complete, the staff committee regrouped to discuss overall recommendations based on the results of the interviews.

Ms. Profic advised that the Governance Committee concurred with the staff committee's recommendations and requested the Board approve entering into contracts with the recommended firms and noted that the contracts will be for a period of three years, with 2 one-year extensions available (can be exercised with Governance Committee approval).

Ms. McDuffie then asked for a motion authorizing the President, Executive Vice President, Treasurer and/or Assistant Treasurer to enter into a contract for legal services with each of the following law firms as recommended by the Governance Committee: Harris Beach as General Counsel, Tax-Exempt Bond Counsel-conflict counsel and Loan Counsel-conflict counsel, Hodgson Russ as Tax-Exempt Bond Counsel; and Hurwitz & Fine as Loan Counsel and General Counsel-conflict counsel. Mr. Emminger moved, and Mr. Blue seconded, to engage the aforementioned law firms as noted. Ms. McDuffie called for the vote and the motion as unanimously approved. Mr. Murray then rejoined the meeting.

2024 Tax Incentives Induced/Closing Schedule. Mr. Cappellino provided this report. Ms. McDuffie directed that the report be received and filed.

Policy Committee Update: Mr. Lipsitz provided a report on the last Policy Committee meeting and noted the Committee approved the Hanes Supply project that is before the Board at today's meeting. Ms. McDuffie directed that the report be received and filed.

INDUCEMENT RESOLUTION

Hanes Supply Inc., 55 James E. Casey Drive, Buffalo, New York. Ms. O’Keefe reviewed this proposed sales and use tax and real property tax abatement benefits project consisting of the construction of a 56,575 SF addition at the rear of the existing 55,000 SF facility for additional warehouse/production uses.

General discussion ensued. The Project’s cost benefit ratio was reviewed, 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 must covenant and agree 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, on an annual basis or as otherwise indicated below through the termination of the PILOT Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment- the total investment made with respect to the Project at the time of Project completion equals or exceeds \$5,100,000 (which represents the product of 85% multiplied by \$6,000,000, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 87 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 within two (2) years of Project completion, the Company has maintained and created FTE employment at the Facility equal to 95 FTE employees [representing the sum of (x) 87 Baseline FTE and (y) 8 FTE employees, being the product of 85% multiplied by 10 (being the 10 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 Agency requires that, at a minimum, the Company provide employment data to the Agency on a 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.
- (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.
- (vi) Construction Period Commitment – that the Company, in accordance with the EIP Policy, meets a 30% MWBE (25% MBE and 5% WBE) utilization rate, based upon total construction contract value, for construction activities.
- (vii) Post Construction Period Commitment – that the Company meets a 30% minority and women (minimum 20% minority and at least 30% minorities or women) job creation requirement within two years after Project completion and maintains those hires/percentages during the term of the PILOT Agreement and on an annual basis completes/implements at least two (2) of the EIP Policy Best Practices as described therein during the term of the PILOT Agreement.

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

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF HANES SUPPLY, 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) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iv) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (v) 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 (vi) 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

MANAGEMENT TEAM REPORT:

Mr. Cappellino thanked staff and the Governance Committee for their good work on the Legal RFP process.

Mr. Cappellino updated Board members on the 201 Ellicott-Braymiller Market project. Mr. Cappellino informed members that the company has not paid its most recent City of Buffalo PILOT payment and its failure to make the payment has resulted in a default and the Agency has

the ability to cancel the PILOT Agreement. Mr. Cappellino noted the owner called just this morning to confirm that he would make payment today to the City so if the PILOT is not paid by the end of business today, the Agency will proceed to terminate the PILOT immediately.

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

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 12:30 p.m.

Dated: October 23, 2024



Elizabeth A. O'Keefe, Secretary