



# Policy Committee

June 6, 2024  
At 9:00 a.m.

ECIDA Offices  
95 Perry Street, 4th Floor Conference Room  
Buffalo, New York 14203

1. Call Meeting to Order
2. Approval of the May 2, 2024 Policy Committee Meeting Minutes (Pages 2-3)
3. Project Matrix (Informational) (Page 4)
4. Project Presentation (Staff – Company Q&A)
  - a) (None)
5. Compliance Matter
  - a) 2023 Recapture Update (Informational) (Pages 5-6)
6. Adaptive Resue Discussion
  - a) Housing Background Discussion (Pages 7-11)
7. Adjournment - Next Meeting July 11, 2024 at 9:00 a.m.

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

- DATE AND PLACE:** May 2, 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, Zachary Evans, Richard Lipsitz, Dr. Susan McCartney, Brenda W. McDuffie, Hon. Glenn Nellis, Laura Smith and David J. State
- EXCUSED:** Hon. April Baskin, A.J. Baynes, Hon. Byron W. Brown, Lavon Stephens and Paul Vukelic
- OTHERS PRESENT:** John Cappellino, President & CEO; Mollie Profic, Chief Financial Officer; Soma Hawramee, Compliance Portfolio Manager, Brian Krygier, Director of Information Technology; Carrie Hocieniec, Operations Assistant/ Assistant Secretary and Robert G. Murray, Esq., as General Counsel/Harris Beach PLLC
- GUESTS:** Yessica Vasquez on behalf of the City of Buffalo

There being a quorum present at 9:00 a.m., the Meeting of the Policy Committee was called to order by the Chair, Mr. Lipsitz.

**MINUTES**

The minutes of the April 4, 2024 Policy Committee meeting were presented. Upon motion made by Ms. McDuffie to approve of the minutes, and seconded by Mr. Blue, the Policy Committee meeting minutes were unanimously approved.

**PROJECT PRESENTATION**

Mr. Cappellino provided a status report of 2024 project activity to the Committee. Mr. Lipsitz directed that the report be received and filed.

**ADAPTIVE REUSE DISCUSSION**

Mr. Cappellino reviewed the ECIDA's adaptive reuse policy and its unwritten requirement conditioning approval of projects that have a market rate housing component upon the project applicant confirmation to commit to a certain level of affordability. He discussed past

Policy Committee meetings and discussions related to this issue and confirmed the Committee's desire to "modify" its affordable housing component requirements for such projects.

Mr. Cappellino confirmed the purpose of the adaptive reuse policy is still focused on reuse of a building, but as presented in the draft affordable housing addendum, certain affordable/workforce housing rental rates will be required for residential market-rate housing adaptive reuse projects.

General discussion ensued.

Ms. Smith stressed that the Agency should require, in addition to the requirement of an affordable/workforce housing rental rate for the specified number of units, that the policy also mandate that the unit be rented to a person/family whose income falls within the same affordable/workforce housing income limit, and that Agency establish a procedure to confirm and monitor the tenant's income as a condition of providing Agency financial assistance.

The committee expressed a desire that staff develop language requiring certification of income levels of occupants, as an additional policy requirement, and that the dialogue continue at the next Policy Committee meeting.

There being no further business to discuss, the meeting was adjourned at 10:13 a.m.

Dated: May 2, 2024

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Elizabeth A. O'Keefe, Secretary





## **MEMORANDUM**

**To:** ECIDA Policy Committee

**From:** ECIDA Staff

**Re:** Erie County Industrial Development Agency Employment Recapture Summary 2023

### **Background:**

The ECIDA adopted a recapture policy on January 29, 2014, and amended and restated the policy on May 25, 2016. When a project fails to achieve the agreed-upon goals identified as Material Factors by the ECIDA Board, particularly maintaining or creating an agreed-upon number of jobs related to the approved ECIDA benefits. Projects are required to submit quarterly job reports to the ECIDA, and if the project falls below its job requirements, the ECIDA staff notifies the ECIDA President/Chief Executive Officer, the Chair of the ECIDA, the Chair of the ECIDA Policy Committee and provides the project with the opportunity to respond. The Chair of the ECIDA will then determine if ECIDA benefits should be terminated and/or modified and/or recaptured. Once a determination is made, the project is notified and given an opportunity to be heard and appeal the determination.

### **Summary:**

In 2023, the Agency recaptured a portion of the PILOT (payment in lieu of taxes) for nine projects, based on employment shortfall percentages. The projects were provided with the option to either repay the pro-rata portion of the incentive or appear before the Policy Committee and ECIDA Board to seek a different resolution. In total, the Agency recaptured \$29,967.17 from nine projects, and all funds were redistributed to the appropriate taxing jurisdictions. Additionally, two projects, Group V Real Estate (Tenant: Athenex Pharma) and Column Development (Tenant: L&W Supply), terminated their PILOTs in 2023.

**2023 Erie County IDA Recapture Projects**

Inducement Date	Project	Minimum Job Requirement (FTE)	2023 Q1-Q4 Job Average (FTE)	2023 Job Status (FTE)	% of Employment Commitment Met 2023	% Shortfall	County Recapture	Town Recapture	School Recapture	Village Recapture	Total Recapture	Note
8/18/2015	The Uniland Partnership of Delaware, LP (Tenant is Sodexo)	485	478	-7	98.6%	1.4%	\$ 279.12	\$ 422.94	\$ 614.06	\$ -	\$ 1,316.12	
5/25/2016	Trahwen-G, LLC (Tenant is Amcor)	30	28	-2	93.3%	6.7%	\$ 693.48	\$ 1,050.79	\$ 2,372.38	\$ -	\$ 4,116.65	
6/16/2015	Cattle Company - Upstate Pharmacy, Ltd.	71	65	-6	91.5%	8.5%	\$ 443.65	\$ 707.80	\$ 1,536.78	\$ -	\$ 2,688.23	
7/25/2018	Column Development (Tenant is L&W Supply)	33	23	-10	69.1%	30.9%	\$ 881.98	\$ 1,336.41	\$ 2,313.21	\$ -	\$ 4,531.60	Early PILOT termination effective January 1, 2024. PILOT was originally set to end in 2026.
2/21/2018	Group V Real Estate, Inc. (Tenant is Athenex Pharma)	71	17	-54	23.4%	76.6%	\$ -	\$ -	\$ -	\$ -	\$ -	Early PILOT termination effective January 1, 2024 due to tenant bankruptcy. PILOT was originally set to end in 2029.
6/22/2016	Great Lakes Dental Technologies, Ltd.	218	204	-14	93.6%	6.4%	\$ 706.28	\$ 1,842.21	\$ 2,771.72	\$ -	\$ 5,320.21	
4/26/2017	Aakron Rule Corp.	142	104	-38	73.2%	26.8%	\$ 1,123.17	\$ 319.78	\$ 2,532.94	\$ 1,423.21	\$ 5,399.10	
12/21/2016	Flexo-Transparent, Inc.	109	92	-17	84.4%	15.6%	\$ 253.74	\$ 914.17	\$ -	\$ -	\$ 1,167.91	
11/18/2015	Flexovit USA, Inc.	71	63	-8	88.7%	11.3%	\$ 999.01	\$ 1,671.06	\$ 2,667.84	\$ -	\$ 5,337.91	
6/18/2014	Flying Bison Brewing Co.	7.5	7	-0.5	93.3%	6.7%	\$ 89.44	\$ -	\$ -	\$ -	\$ 89.44	City PILOT ended in 2022. Only recaptured a portion of the County PILOT.
<b>TOTAL</b>							<b>\$ 5,469.87</b>	<b>\$ 8,265.16</b>	<b>\$ 14,808.93</b>	<b>\$ 1,423.21</b>	<b>\$ 29,967.17</b>	

**TOTAL RECAPTURE**

County Recapture	Town Recapture	School Recapture	Village Recapture	Total Recapture
\$ 5,469.87	\$ 8,265.16	\$ 14,808.93	\$ 1,423.21	\$ 29,967.17

## ADAPTIVE REUSE POLICY

### Addendum #1

Applicability of the Adaptive Reuse Policy to an Adaptive Reuse Project consisting of or containing an element of, for rent residential housing

May \_\_, 2024

#### **Objective**

Adaptive Reuse Projects consisting entirely of, or containing an element of, for-rent residential housing (hereinafter, collectively, an “Adaptive Reuse Housing Project”) continue to seek financial assistance from the Erie County Industrial Development Agency (the “Agency”). These project have successfully enabled the Agency to encourage the adaptive reuse of old and often abandoned and blighted structures, being one of the primary purposes of the Agency’s Adaptive Reuse Policy. To help address the growing housing affordability and accessibility challenges faced by many Erie County residents, the Agency will now require Adaptive Reuse Housing Projects to include a certain number of, and potentially a mix of configurations of, workforce/affordable housing units that must be leased to a tenant(s) meeting certain income eligibility limits, subject to the criteria described herein.

#### **Key Definitions/Concepts**

Adaptive Reuse Housing Project. An Adaptive Reuse Project consisting entirely of, or containing an element of, for-rent residential housing.

Area Median Income (“AMI”). AMI is the median household income for a particular geographic area. The New York State Affordable Housing Corporation (“AHC”) publishes annually the Statewide and regional AMI figures. AMI serves as the benchmark for setting income thresholds that govern eligibility for housing assistance programs in New York. These programs often define their income limits as specific percentages of AMI, such as 50% of 80%, to determine if an individual or household qualifies for aid in covering housing expenses.

Workforce/Affordable Housing Rental Rate. For the purposes of this Addendum #1, the Agency defines a housing unit as “affordable” if the total housing costs do not exceed 30% of a household’s gross monthly income. The Workforce/Affordable Housing Rental Rate for a Workforce/Affordable Unit shall equal the product of (i) 30% and (ii) the 80% AMI figure for the year of initial occupancy for each such lease agreement lessee based on the number of occupants of a unit, where it is assumed a studio unit houses one person, a 1BR unit houses one person, a 2BR unit houses two people, and a 3 BR unit houses three people, and then dividing the product by 12.

Workforce/Affordable Unit. A residential unit within an Adaptive Reuse Housing Project that is subject to the terms and conditions of this Addendum #1.



**Adaptive Reuse Housing Project Requirements**

To qualify for Agency financial assistance, in addition to meeting the existing Adaptive Reuse Policy criteria, an Adaptive Reuse Housing Project must:

- (i) contain a certain number of Workforce/Affordable Unit(s) having rental rates affordable to individuals and families at the Workforce/Affordable Housing Rental Rate; and
- (ii) contain, if possible, a mix of configurations (studio, 1BR, 2BR, 3BR) of Workforce/Affordable Unit(s) to meet housing needs for households of varying size based on a building’s internal infrastructure and related financing considerations; and
- (iii) Require and restrict, via income verification, the occupancy of the Workforce/Affordable Unit(s) to the leasehold agreement lessee whose annual income is at or below the 80% AMI figure as identified in the AHC table for the initial year of occupancy of each such lease agreement lessee of a Workforce/Affordable Unit.

The required number of Workforce/Affordable Unit(s) for a project to qualify as an Adaptive Reuse Housing Project is as follows:

Total Number of Units	Number/Percentage of required Workforce/Affordable Units
1-10	At least one workforce/affordable unit
11 - 50	10%, with the required number to be determined by multiplying 10% by the total number of units and rounding the product up if the product contains a decimal of 0.5 or higher, and rounding the product down if the product contains a decimal of 0.4 or lower
51-100	15%, with the required number to be determined by multiplying 15% by the total number of units and rounding the product up if the product contains a decimal of 0.5 or higher, and rounding the product down if the product contains a decimal of 0.4 or lower
101 or more	20%, with the required number to be determined by multiplying 20% by the total number of units and rounding the product up if the product contains a decimal of 0.5 or higher, and rounding the product down if the product contains a decimal of 0.4 of lower



Applicants will be required to certify and confirm, at the time of application and on an annual basis during the term of the Agency's monitoring and compliance period (not to exceed the applicable time period being two years following project completion (certificate of occupancy issuance) or the term of the PILOT Agreement benefit period, or such other term as required by the Agency) that the project will meet and continues to meet the Addendum #1 Adaptive Reuse Housing Project Requirements.

The goal of the Agency's Adaptive Reuse Policy is, ultimately, to encourage the adaptive reuse of existing but abandoned/blighted buildings. Notwithstanding anything contained within this Addendum #1 to the contrary, the Agency reserves the right to waive any or all the terms and conditions of this addendum on a case-by-case basis. This waiver can be granted if the Agency determines that strict adherence to Addendum #1 requirements would jeopardize the adaptive reuse of a building in alignment with the Agency's Adaptive Reuse Policy goals.



May 17, 2024

ECIDA Chair

Brenda McDuffie

The Economic Development Corporation for Erie County

95 Perry Street, Suite 104

Buffalo, NY 14203

CC: John Cappellino, ECIDA & ECIDA Board

Dear Chair McDuffie:

I have been following the ECIDA's Policy Committee's activity as it relates to the desire to create an affordable housing requirement for Adaptive Reuse projects. The Buffalo Niagara Partnership (BNP) strongly supports expanding affordable housing options through targeted incentives and sensible zoning. The BNP has outlined the following concerns about the Committee's draft proposal and its effectiveness as it is currently proposed:

**1. Affordability but for whom?**

The draft proposal requires a percentage of units to fall within income affordability limits but does nothing to ensure the people renting the units need it most and meet those requirements. The proposal as written simply limits the amount of rent that can be charged by a landlord based on the number of total units in the project - no matter the income level of the person renting.

**2. Scale of impact given Governor's legislation**

As discussed at the last Policy Committee, the Governor has created a new State Affordable Housing Program (421P, 421PP) that could significantly increase the total number of affordable units- both new and renovated- in the region. The timing of the ECIDA policy change will only serve to confuse the marketplace and will pale

in comparison to the total number of units that the Governor's new program can supply. The NYS program will also ensure the incomes of those renting the units meet the goal.

### **3. Unintended impacts on Adaptive Reuse program**

The draft policy currently does not have a way for the developer to seek exception if the creation of the number of affordable units makes the project unworkable. The adaptive reuse program is especially important given the changing office landscape which will require many effective tools to spur conversion. Now is exactly the wrong time to limit the potential of Adaptive Resue.

Instead of advancing the draft policy, the ECIDA needs to explore how it can best leverage and possibly enhance the NYS program to achieve the important goal of creating the greatest number of units across our region for those who need them most. The BNP stands ready to assist in that effort.

Sincerely,



Dottie Gallagher  
President and CEO  
Buffalo Niagara Partnership