

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

**DATE AND PLACE:** October 25, 2017, at the Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor ESD Conference Room, Buffalo, New York 14203

**PRESENT:** Rev. Mark E. Blue, James F. Doherty, Tyra Johnson, Richard Lipsitz, Jr., David L. Lowrey, Brenda W. McDuffie, Hon. Glenn R. Nellis, Louis Panzica, Hon. Mark C. Poloncarz and Sister Denise Roche

**EXCUSED:** Hon. Diane Benczkowski, Hon. Byron W. Brown, Hon. Joseph H. Emminger, Dottie Gallagher-Cohen, Hon. Joseph C. Lorigo, John J. Mudie, Hon. Darius G. Pridgen, Paul V. Vukelic and Hon. Barry A. Weinstein

**OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Mollie Profic, Treasurer; Karen M. Fiala, Assistant Treasurer; Lori Szewczyk, Director of Grants and Pietra G. Zaffram, Assistant Secretary

**GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist; Maria Whyte, Deputy County Executive

At 4:15 pm, Ms. McDuffie called the meeting to order, noting that there was no quorum, and the members assembled would proceed with informational items on the agenda.

**REPORTS/ACTION ITEMS/INFORMATION ITEMS**

Financial Report. Ms. Profic reviewed the September 2017 financial statements noting that the Agency finished the month with total assets of \$35.3 million and net assets of \$23.6 million. The monthly income statement shows operating revenues of \$235,000, \$114,000 of which was administrative fees, and was below budget for the month by \$11,000. September operating revenues were under budget by \$49,000 as a result of favorable variances in professional services, salaries and benefits. Considering solely operating revenue and expenses, there was net loss of \$42,000 for September. Ms. Profic reported that, after costs for strategic initiatives and depreciation, there was net loss of just under \$2 million for the month, mainly a result of UDAG funds granted to ILDC for the Bethlehem Steel land purchase. On a year-to-date basis, operating revenue is \$2.4 million, which is \$536,000 ahead of budget for the year. Ms. Profic explained the driver of that variance in revenue is due to administrative fees, which, at \$1.9 million are in excess of budget by \$522,000 through September. Ms. Profic noted that the Agency achieved its annual administrative fee budget of \$1.8 million in September. Operating expenses of \$2.1 million are under budget by \$258,000. Net special project grant revenue of \$322,000 brings net income for the year to \$625,000. Ms. Profic reported that, after

factoring in strategic investments and depreciation, there is a year-to-date net loss of \$4.7 million.

Mr. Poloncarz inquired as to whether the \$1.8 million in administrative fees referenced in the financial report are considered in the budget. Ms. Profic replied in the affirmative, noting that the Agency is at \$1.9 million in administrative fees through September of 2017 and they are projecting overall administrative fee revenue in the neighborhood of \$2.0-\$2.1 million for the year. Ms. McDuffie then directed that the report be received and filed.

Proposed Budget Timetable. Ms. Profic reviewed the 2018 budget timetable including upcoming events and due dates. Ms. Profic reported that they are ready to approve the budget as presented at the September 2017 Agency meeting so that it may be submitted to the ABO by the November 1<sup>st</sup> deadline. Mr. Poloncarz inquired as to how the filing deadline of November 1<sup>st</sup> would be achieved if the budget was not approved at this meeting. Ms. Zaffram replied that should the budget not be approved in time for the November 1<sup>st</sup> filing date, that Agency staff discussed an option of submitting the draft budget to the PARIS System subject to pending approval.

2017 Tax Incentive Induced/Closed Schedule/Estimated Real Property Tax Impact. Ms. Fiala presented this report and noted that the Pilgrim Village project has been amended. Ms. Fiala reported that Mr. Trammel is in litigation with his partners in the project. If the litigation moves forward, a new, scaled down version of the project will be presented to the Agency with a new application. Ms. McDuffie then directed that the report be received and filed.

At this point in time, Tyra Johnson joined the meeting. Ms. McDuffie declared a quorum present and called the meeting of the Agency to order at 4:22 p.m.

## **MINUTES**

The minutes of the September 27, 2017 meeting of the members of the Agency were presented. Mr. Nellis moved, and Rev. Blue seconded, to approve of the meeting minutes. Ms. McDuffie called for the vote and the minutes were unanimously approved.

## **REPORTS/ACTION ITEMS/INFORMATION ITEMS**

Approval of 2018 Operating & Capital Budget. Ms. Profic reported that there have been no changes to the budget since it was presented to the Board at the September 2017 meeting. Mr. Poloncarz noted that the Agency has presented a conservative budget. Mr. Nellis moved and Rev. Blue seconded a motion to approve the 2018 Operating & Capital Budget. Ms. McDuffie called for the vote and the 2018 Operating & Capital Budget was unanimously approved.

Approval of Resolution to Execute Customer Agreement with NYSERDA for Technical/Design Support for the Net Zero Project. Ms. Szewczyk and Mr. Cappellino presented a request for a resolution authorizing the Agency to enter into a Grant Agreement with NYSERDA to benefit the design and construction of a proposed zero net energy facility. Mr. Cappellino described a two phase grant provided by NYSERDA, where a Technical Analysis component has already been awarded to provide assistance related to energy analysis, demand response, and analysis of deep energy savings. The grant will provide \$12,415 in support for Technical Assistance and an additional \$44,220 for Zero Net Technical Support. Mr. Cappellino

noted that the Agency desires to accept the NYSERDA grant for the Technical Analysis and Zero Net Technical Support components in the total amount of \$56,635 and to appropriate the required local match expenditure in the total amount of \$18,470, as required by NYSERDA.

Mr. Poloncarz moved, and Mr. Lipsitz seconded, to approve the execution of the Customer Agreement with NYSERDA. Ms. McDuffie called for the vote, and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE AGENCY TO ENTER INTO A CERTAIN GRANT AGREEMENT WITH THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (“NYSERDA”) TO BENEFIT THE DESIGN AND CONSTRUCTION OF THE PROPOSED ZERO NET ENERGY FACILITY

Policy Committee Update. Mr. Lipsitz provided members with an update of the most recently completed Policy Committee meeting, noting that an adaptive reuse working group is continuing to meet to review projects and refine policy. Ms. McDuffie directed that the report be received and filed.

## INDUCEMENT RESOLUTIONS

157 Great Arrow, LLC, 157 Great Arrow Avenue, Buffalo, New York. Ms. Fiala reviewed this proposed sales tax and mortgage recording tax benefits project involving the adaptive reuse of a portion of the Pierce Arrow complex. Ms. Fiala noted that the warehouse is 95,000 sq. ft., eligible for historic tax credits and is currently under review by the State Historic Parks office. Ms. Fiala reported that the project anticipates creating approximately 72 one and two bedroom apartments as well as 3,000 sq. ft. of commercial space. The building has been under-utilized for over 25 years and a portion of the building is currently being used for car storage. Ms. Fiala noted that there is a letter of support from Mayor Brown in the Board package.

As a condition precedent of receiving financial assistance and as a material term and condition established by the Agency in connection with approval of the project, Ms. Fiala noted that the company must, subject to potential termination and/or modification and a recapture of financial assistance, submit on an annual basis or as otherwise indicated below, through the conclusion of the later of two years following either the construction completion date or 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 \$12,992,250.00 (which represents the product of 85% multiplied by \$15,285,000.00, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – the number of current FTE employees in the then current year at the Facility and further confirmation that the Company has maintained and created FTE employment at the Facility equal to one (1) FTE employee (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). 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.
- (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.

Rev. Blue noted that the Agency is trying to promote affordable housing and it is disheartening that the state application process as it stands is preventing more affordable housing projects from being approved. Rev. Blue questioned what can be done in order to have more affordable housing projects approved. He queried whether the Agency can speak with individuals to help assist them in the process in order to facilitate such projects being approved.

Ms. McDuffie replied that the application process for Tax Credits is controlled for affordable housing projects by DHCR and there is at least a two year waiting period for such approvals. In addition, typically adaptive reuse projects are cost-prohibitive to rehabilitate some of the older vacant facilities that are subject to the Agency's Adaptive Reuse Policy. Ms. McDuffie noted that the Policy Committee had a discussion on this project and the Deputy County Executive inquired as to whether this particular project could be combined with low income housing. The Committee spoke to the developer regarding the Board's desire to develop opportunities for low income housing in the future.

Ms. McDuffie also noted that the adaptive reuse working group has taken steps and will present information to educate the Board regarding housing needs in the community. They have created a housing focus subgroup that has not yet commenced, but the goal will be to incorporate a housing policy into the adaptive reuse approvals to allow for stimulation of low income housing projects. Ms. McDuffie noted that the subgroup will draw on an expertise of a wide-range of sources in the community including PUSH, HOME and BUDC. The goal is to adopt policies that will improve the opportunity for low income housing projects to be attractive.

Mr. Lipsitz noted that the goal is to incentivize affordable housing throughout the city and it is a positive development that there has been outreach to members of the community outside the membership of the Agency. He acknowledged that this will not be an easy lift but he is enthusiastic to begin the process.

In response, Rev. Blue acknowledged that the hold up in the approvals of low income housing is not at the Board level, but rather, the HCR application process, and project vetting needs to be reviewed and possibly amended before the projects get to the Board.

At this point a comment was received from a member of the general public in attendance at the meeting regarding the project. Ms. McDuffie noted that the Board's responsibility is to consider projects on their merits, and there is no consideration given to the political views of the applicants in this process.

Mr. Weathers noted that by law political affiliation is not allowed to be considered in the course of discussions on project applicants and is not part of the decision making process.

Mr. Panzica moved, and Sister Denise seconded, to approve of the project as proposed. Ms. McDuffie called for the vote, and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF 157 GREAT ARROW, LLC, 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 MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

#### **AMENDATORY INDUCEMENT RESOLUTION**

Moog, Inc., 400 Jamison Road, Elma, New York. Mr. Cappellino then presented for the Board's consideration an amendment to the previously approved inducement resolution for Moog's project involving a new building for its aircraft division. As a result of a conversation with the Company, Mr. Cappellino reported that the company advised staff that they undercounted relocated workers when submitting its project application and the count should be 288, not 251 as previously reported. Moog continues to commit to 42 new jobs but the restating of the number of relocated workers requires amending the material terms and conditions calculations of the project application.

Mr. Poloncarz commended Moog for proactively informing the Agency regarding the change in its data and remarked that the Company is a long time employer in the community and continues to grow and support the community.

Mr. Poloncarz moved and Mr. Blue seconded to approve of the actions required to be taken to amend the inducement resolution for the project.

Ms. McDuffie thanked the Company for admitting the error in their calculations.

Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

AMENDATORY RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE APPROVAL OF CERTAIN MATERIAL TERMS AND CONDITIONS RELATED TO THE PROVISION OF FINANCIAL ASSISTANCE WITH RESPECT TO THE MOOG, INC. PROJECT

## REPORTS/ACTION ITEMS/INFORMATION ITEMS

OSC Audit Response. Mr. Weathers reviewed the Agency's response to the New York State Office of State Controller ("OSC") Report of Examination, noting that the Agency proposed a corrective action plan that will be completed within 90 days. Mr. Weathers pointed out that in the response to the OSC Report of Examination, the Agency stated it will continue to implement the provisions of laws and best practices as they are adopted by the New York State Legislature and the New York State Authority Budget Office, and Mr. Weathers remarked that this language was inserted in the letter to reinforce that the Agency is under the purview of the ABO and New York law. Rev. Blue moved, and seconded by Sister Denise, to approve of the response to the New York State Office of State Controller ("OSC") Report of Examination. Ms. McDuffie called for the vote, and it was unanimously approved.

Mr. Weathers commented that this Board is a leader in transparency and policy development amongst all the industrial development agencies in the state.

## MANAGEMENT TEAM REPORTS

Mr. Weathers reported that an EDA grant is available to the ILDC relative to the Bethlehem Steel project, noting that the EDA director made staff aware of the availability of the grant. He also reported that Rev. Blue received the Community Achievement Award at the recent Black Achiever's Award Banquet.

There being no further business to discuss, upon motion made by Mr. Poloncarz and seconded by Rev. Blue, the meeting was unanimously adjourned.

Dated: October 25, 2017

  
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Pietra G. Zaffran, Assistant Secretary