ECIDA
THE ECONOMIC DEVELOPMENT CORPORATION FOR ERIE COUNTY

Policy Committee

February 4th, 2016
8:30 am
95 Perry Street, 5th Floor Conference Room
Buffalo, NY 14203

1. Call Meeting to Order

2. Approval of Minutes
   a. Policy Committee January 7, 2016 **(pages 2-6)**

3. Project Matrix **(pages 7-13)**

4. Informational Items
   a. Regional Economic Development Council Update
      Michael Ball – Deputy Director Western Region

5. State Legislation
   a. NYSEDC Best Practices – Clawback/Recapture **(pages 14-18)**
   b. NYSEDC Best Practices – Evaluative Criteria **(pages 19-25)**
   c. Proposed Part R Budget Legislation - **(pages 26-27)**
      NYSEDC Opposition

6. 2016 Work Plan Discussion

   a. Distribute Comments Received - **(pages 28-40)**

      Items for Consideration

      Living Wage, Adaptive Reuse/Targeted Areas, Mortgage Tax Exemption
      But-For-Test/ ROI, Tiered Incentive Scoring and PILOT Schedules
      ECIDA/Local Community/Applicant Role in Defining Community Benefit
      MWBE, Union Neutrality/Card Check, First Source Hiring

7. Adjournment – Next Meeting March 10th, 8:30 a.m.

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

MEETING: January 7, 2016, at Erie County Industrial Development Agency, 95 Perry Street, 5th Floor Conference Room, Buffalo, New York

PRESENT: James J. Allen, Hon. Mary Cooke, Richard Lipsitz, Jr., Brenda W. McDuffie, Frank B. Mesiah, Hon. Glenn R. Nellis, Hon. Edward A. Rath, David J. State and Maria Whyte

ABSENT: Hon. Byron W. Brown, Chris T. Johnston, John J. Mudie and Laura Smith

OTHERS PRESENT: Steve Weathers, Chief Executive Office; John Cappellino, Executive Vice President; Karen M. Fiala, Assistant Treasurer; and Robert G. Murray, Secretary

GUESTS: Don Cummings of Alt Store LLC; John Hannon on behalf of Triad Recycling; Dan Leonard of Buffalo Niagara Partnership

At 8:31 a.m., a quorum being present, Mr. Lipsitz called the meeting to order.

MINUTES

The minutes of the December 3, 2015 Policy Committee meeting were presented. Upon motion made by Mr. Rath and seconded by Ms. McDuffie the aforementioned Policy Committee meeting minutes were unanimously approved.

PROJECT MATRIX

Mr. Lipsitz reviewed the Agency's project matrix. There being no comments, Mr. Lipsitz directed that the report be received and filed.

PROJECT PRESENTATIONS

Alt Store, LLC (the "Company"), 1959 Elmwood Avenue, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax exemption benefits only project involving the renovation of an existing 30,000 sq. ft. facility and construction of a 10,000 sq. ft. addition as well as the purchase of certain items of machinery and equipment to establish a warehouse type facility servicing small and medium sized food service operators.

Mr. Cappellino stated that in exchange for providing the sales tax exemption benefits, the approval of this project will be conditioned upon adherence to certain material terms and conditions with respect to potential recapture 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 = $6,900,000 85% = $5,865,000
Employment	Same as PILOT term	Create 85% projected: Projected: FT = 19 PT = 27 Total = 32 FTE 85% = 27 FTE
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	See Recapture Period	Adherence to pay equity policy
Recapture Period	2 Years after Project Completion	Recapture of state and local sales taxes

Mr. Cappellino confirmed that the applicant will be a tenant in the facility and is not the owner of the facility. Ms. McDuffie queried as to why the Company chose to locate in the Buffalo area. Mr. Cummings responded that the Company has researched the area and found Buffalo to be a prime market for small to midsize restaurant customers and also found this area attractive because it is similar in size and scope to its other operations located in Michigan, Ohio and Pennsylvania.

Mr. Rath welcomed the Company to the community and queried as to the job categories. Mr. Cummings responded that jobs to be created will run from management to warehouse to sales to marketing positions.

Ms. Whyte welcomed the Company to the community and asked the Company what would happen if IDA financial assistance was not available. Mr. Cummings responded that the Company has researched locating in other areas, including Atlanta, Georgia and Charlotte, North Carolina, and noted that those areas are closer to its headquarter facilities such that transportation costs could be reduced if they chose to locate in those areas as opposed to Buffalo and in an effort to make up the transportation costs difference the financial assistance provided by the IDA is critical. Ms. Whyte thanked the Company for their response and confirmed that the Policy Committee needs to determine if a Company would undertake a project even without IDA financial assistance and as such, the Committee needs to understand how the incentives make a difference to ensure good use of taxpayers' dollars. Ms. Whyte then queried as to how the Company would go about hiring its local workforce. Mr. Cummings responded that the Company will work with the local workforce and investment board and other local agencies.

There being no further discussion, Mr. Allen moved and Ms. McDuffie seconded to approve of the project. Mr. Lipsitz called for the vote and the project was then unanimously approved.

3755 River Road LLC (the "Company"), 3701 River Road, Tonawanda, New York. Mr. Cappellino reviewed this proposed sales tax exemption benefits, mortgage recording tax exemption benefits and 7-year real property tax abatement benefits project involving the repair and renovation of two existing buildings and the construction of a new 4,000 sq. ft. processing center as well as related equipment and infrastructure improvements to support the Company's recycling and zero land fill efforts.

Mr. Cappellino stated that in exchange for providing the sales tax exemption benefits, the mortgage recording tax exemption benefits and the 7-year real property tax abatement benefits, the approval of this project will be conditioned upon adherence to certain material terms and conditions with respect to potential recapture 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 = $2,993,000 85% = $2,544,050
Employment	Coincides with 7-Year PILOT term	Create 85% of project jobs = 3 85% of projected jobs = 2 Recapture Employment = 2
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Coincides with 7-Year PILOT term	Adherence to pay equity policy
Recapture Period	Coincides with 7-Year PILOT term	Recapture of state and local sales taxes, mortgage tax and real property taxes

Ms. Whyte queried as to what would happen if Agency financial assistance was not provided to the Company. Mr. Hannon, a representative of the Company, responded that the Company's goal with respect to this project is to keep construction materials that are otherwise not incorporated into a finished product or that result from demolition efforts out of landfills. Mr. Hannon responded that these efforts produce low margins and to make it work the financial incentives allow the Company to make up this difference. Ms. Whyte then queried as to whether the Company sees any additional hires beyond the 3 new jobs as currently proposed. Mr. Hannon responded that the Company focuses on new recycling streams and since 2011, it has increased its number of employees from 1 to 15.

There being no further discussion, Ms. McDuffie moved and Mr. Mesiah seconded to approve of the project.

Ms. Whyte then stated the importance of noting that the benefits being provided to the Company should not be determined based on simply dividing the approximately $140,000 in financial assistance by the number of jobs, but rather, consideration should be given to the fact that the jobs will be retained over a 7 year PILOT benefit period such that the consideration should also take into account that the project involves incentives of approximately $140,000 and

3 new jobs to be created and maintained each year for a 7-year benefit period. Mr. Lipsitz and Mr. Cappellino both confirmed that Ms. Whyte is correct in her conclusion and consideration must be given to the fact that jobs are being pledged and salaries being paid over a certain time and incentives should not be calculated just based on a 1 year time period.

There being no further discussion, Mr. Lipsitz called for the vote and the project was then unanimously approved.

INFORMATIONAL ITEMS

Tenant Approval for 50 Cobham LLC ("Company"), NeuroproteXeon, and Krog Development, 50 Cobham Drive, Orchard Park, New York. Ms. Fiala noted that, as an information item only for the Policy Committee, the Agency is currently in leasehold and providing PILOT incentives to a certain project located at 50 Cobham Drive in Orchard Park. As a requirement under the Lease/Leaseback Agreement by and between the Company and the Agency, the Agency must consent to any proposed subleasing of the Company's space to new tenants. The Company has provided the Agency with information related to its proposed leasing of space to NeuroproteXeon and asked the Agency to provide its consent to lease such space. This approval will be contingent upon the ECIDA Board consenting to leasing such space. There being no further questions, Mr. Lipsitz asked that the report be received and filed.

New State Legislation-IDA Reform Bill. Mr. Cappellino reviewed new legislation signed by Governor Cuomo on December 18, 2015, and effective on June 15, 2016, that requires and establishes common standards for IDAs in regard to applications and financial assistance agreements, and requires IDAs to develop clawback/suspension policies, project selection criteria, and further requires applicants to certify and document jobs that are created and/or retained. Mr. Cappellino then reviewed some of the specifics, and noted that both Mr. Murray and Mr. Cappellino are working on various committees, established by the New York State Economic Development Council, to create template and best practice applications, agreements, and recommendations with respect to implementing these new IDA requirements.

Sales Tax Monitoring Update. Ms. Fiala provided Committee members with an update regarding IDA requirements to, and staff efforts related to, tracking the amount of sales tax exemption benefits provided to and claimed by companies. Ms. Fiala reviewed the staff's auditing and analysis practices to match up the amount of incentives claimed with the amount of incentives authorized. Ms. Fiala noted that last year IDA staff found 4 companies to have discrepancies between the amount of incentives claimed in comparison to the amount of incentives authorized. Two of these companies were found to have filled-out their reporting forms incorrectly such that there was no overage. Two of the companies, it was determined, had overages of approximately $27 and $3,400, respectively, and have already submitted payment of the overage to the ECIDA in compliance with New York State law. The ECIDA will be forwarding the payment, as required by law, to New York State.

Ms. Fiala also informed Committee members that Ms. Boudreau oversees the sales tax compliance process and on a quarterly basis holds information sessions with companies that are utilizing the Agency's sales tax exemption benefit and reminds companies of the various sales tax procedures and to also not utilize the sales tax exemption benefit beyond the amount so authorized.

2016 WORK PLAN DISCUSSION

Mr. Lipsitz reviewed the various items listed in the Policy Committee agenda and noted that Agency staff has received correspondence from County Executive Poloncarz, the Buffalo Niagara Partnership, and David Mingoia on behalf of the Amherst IDA proposing various Policy Committee agenda items. Mr. Lipsitz then proposed that the Policy Committee discuss how to prioritize the various agenda items.

Mr. Allen suggested that the Policy Committee wait to prioritize such agenda items until after the upcoming New York State Economic Development Council ("NYSEDC") meeting, to be held in late January, particularly in regard to the new IDA Reform Bill as previously discussed at this meeting as it will be a topic of discussion at the NYSEDC meeting.

Ms. Whyte thanked Mr. Lipsitz for his leadership and suggested that Policy Committee agenda items be linked to local and regional economic development plans.

Mr. Leonard then spoke on behalf of Laura Smith, for the Buffalo Niagara Partnership, and reviewed the Buffalo Niagara Partnership proposal that specific Policy Committee agenda items be tabled for now so the Agency can review the One Region Forward Plan first in an effort to confirm that ECIDA Policy Committee agenda items be tailored to match the regional plans.

Mr. State thanked Mr. Lipsitz for including the mortgage recording tax exemption issue on the list of potential Policy Committee agenda items and confirmed that this issue recognizes a broader issue of the role of public transit and economic development and how the IDA can assist overall in public transportation efforts.

Mr. Allen suggested that the Agency consider reviewing the policies that are already in place including the County-wide Uniform Tax Exemption Policy and consider this policy, and other best practices that have already been approved by the IDA are current with the regional plan.

Ms. McDuffie then stated that the best way to proceed is to confirm that the IDA policies and priorities match existing regional economic development policies and priorities. Mr. Lipsitz then suggested that the Policy Committee continue to discuss these issues at the next Policy Committee meeting.

At this point in time, Mr. Lipsitz noted that this would be the last meeting attended by Ms. Cooke, as she will be resigning from the Policy Committee after today's meeting and thanked Ms. Cooke for her service.

There being no further business to discuss, the meeting was adjourned at 9:45 a.m.

Dated: January 7, 2016

Robert G. Murray, Secretary

Project Matrix/Material Factors/Clawbacks

Count	Project Name	Approval Date	Project Amount	Jobs Retained	Factors		Clawback	Local Labor	Length of Term	Additional Findings	*Incentive Amount
					Job Creation	Jobs Created					
1	TM Montante	Apr-13	$10,628,000	168	85% -New 70 jobs	82	Sales Tax		Period of PILOT 10 Years		$2,056,000
1	Niagara Blower	Apr-13	$1,035,000	110	85% -New 17 jobs	20	Sales Tax		5 years		$61,250
1	Swan Street	Apr-13	$13,664,000				Sales Tax		5 years	Adaptive Reuse	$591,000
1	Automated Machine Tech	May-13	$925,000	3	85% -New 1 jobs	1	Sales/ Mortgage Tax	YES	Period of PILOT 10 Years		$156,250
1	Mc Gard	May-13	$8,250,000	457	85% -New 19 jobs	22	Sales/ Mortgage Tax	YES	Period of PILOT 7 Years		$1,123,000
1	Ellicott - Arctic Freezer	May-13	$14,675,000				Sales/ Mortgage Tax	YES	2 years or Termination of Sales Tax	Adaptive Reuse	$634,000
1	HH Richardson	Jun-13	$55,153,782		85% -New 47 jobs	55	PILOT/SalesMortgage Tax	YES	Period of PILOT 10 Years	Retail Highly Distressed/Hotel Policy/Adaptive Reuse	$8,465,000
1	Simmers Crane	Jun-13	$1,710,000	30	85% -New 4 jobs	5	PILOT/SalesMortgage Tax	YES	Period of PILOT 10 Years		$388,000
1	Compass East	Jul-13	$21,086,889				Sales Tax	YES	2 years or Termination of Sales Tax	Retail Highly Distressed/Adaptive Reuse	$456,612
1	Frey the Wheelman	Jul-13	$1,050,000	8	85% -New 1 job	1	PILOT/SalesMortgage Tax	YES	Period of PILOT 7 Years		$478,600
1	OSC Equipment Services	Aug-13	$17,539,473	20	85% -New 9 job	10	PILOT/SalesMortgage Tax	YES	Period of PILOT 10 Years		$355,135
1	Calspan Corp - Phase II	Aug-13	$10,000,000	90	85% -New 4 job	4	Sales Tax	YES	2 years or Termination of Sales Tax		$393,750
1	Calspan Corp/Harper - Phase 1	Aug-13		75	85% -New 4 job	5	Sales Tax	YES	2 years or Termination of Sales Tax		$306,250
1	Zaepfel Dev. Wythe Will	Sep-13	$18,700,000	217	85% -New 29 jobs	34	PILOT/SalesMortgage Tax	YES	Period of PILOT 10 Years		$5,147,500
1	Bosche LLC	Oct-13	$5,800,000				Sales/ Mortgage Tax	YES	2 years or Termination of Sales Tax	Adaptive Reuse	$255,000
1	Upstate Niagara Coop.	Oct-13	$2,900,000	175			PILOT/Sales Tax	YES	Period of PILOT 7 Years		$265,000
1	API Heat Transfer	Nov-13	$1,732,134	287	85% -New 6 jobs	7	PILOT/Sales Tax	YES	Period of PILOT 10 Years		$187,000
1	Delaware North Co	Nov-13	$17,152,000	350	85% -New 55 jobs	64	Sales Tax	YES	2 years or Termination of Sales Tax		$807,000

Project Matrix/Material Factors/Clawbacks

Count	Project Name	Approval Date	Project Amount	Jobs Retained	Factors		Clawback	Local Labor	Length of Term	Additional Findings	*Incentive Amount
					Job Creation	Jobs Created					
1	Custom Sheet Metal	Dec-13	$1,049,127	11	85% -New 2 jobs	2	PILOT/SalesMortgage Tax	YES	Period of PILOT 7 Years		$100,000
1	DNC 250 (Uniland)	Dec-13	$51,785,708	350	85% -New 55 jobs	64	PILOT/SalesMortgage Tax	YES - Including Hotel	Period of PILOT 7 and 10 years Retail/Parking 7 DNC Space 10	Retail Highly Distressed/No Sales Tax for Vacant Space Buildout	$10,017,000

Count	Project Name	Approval Date	Project Amount	Jobs Retained	Factors		Clawback	Local Labor	Length of Term	Additional Findings	Incentive Amount
					Job Creation	Jobs Created					
Adaptive Reuse 2013 Sub Total 5			$110,379,671	0		55					$10,401,612
2013 Total (April - Dec) 20			$254,836,113	2351		376					$32,243,347

*Incentive Amount does not include other public incentives ie: 485-a, Historic Tax Credits etc

Project Matrix/Material Factors/Clawbacks

Count	Project Name	Approval Date	Project Amount	Material				Terms	Clawback	Local Labor	Length of Term	Additional Findings	*Incentive Amount
				Investment	Job Retent	Jobs Retained	Jobs Created						
1	AMS Servicing , LLC	Jan-14	$2,504,300	85% threshold $2,128,655	100% Base 270 jobs	270	194		Sales Tax	YES	2 years after Termination of Sales Tax		$219,000
1	North American Salt	Jan-14	$7,300,000	85% threshold $6,205,000			7		PILOT/Sales Tax	YES	Period of PILOT 7 Years		$1,358,500
1	500 Seneca, LLC	Feb-14	$31,737,624	85% threshold $26,976,980	100% Base 20 jobs	20	13		Sales/ Mortgage Tax	YES	2 years after Termination of Sales Tax	Adaptive Reuse Retail Highly Distressed/No Sales Tax for Vacant Space Buildout	$1,180,000
1	Elm-Michigan Holdings	Feb-14	$8,133,102	85% threshold $6,913,136	100% Base 19 jobs	19	1		Sales/ Mortgage Tax	YES	2 years after Termination of Sales Tax	Adaptive Reuse Sales Tax Limited to Residential Buildout	$259,000
1	ARCO Lofts	Mar-14	$12,424,750	threshold $10,561,037				85% Construction 34 jobs	Sales/ Mortgage Tax	YES	2 years or Termination of Sales Tax	Adaptive Reuse	$416,000
1	9187 Group(173 Elm St)	Mar-14	$1,768,000	85% threshold $1,502,800				85% Construction 59 jobs	Sales/ Mortgage Tax	YES	2 years or Termination of Sale Tax	Adaptive Reuse	$65,800
1	954 West Ferry LLC	May-14	$1,615,000	85% threshold $1,372,750				85% Construction 49 jobs	Sales/ Mortgage Tax	YES	2 years or Termination of Sale Tax	Adaptive Reuse /No Sales Tax for Tennant Space Buildout	$64,500
1	Petrolift	Jun-14	$1,582,250	85% threshold $1,344,912			9		Sales Tax	YES	2 years or Termination of Sales Tax		$24,500
1	Derrick Corp.	Jun-14	$9,750,000	85% threshold $8,287,500	100% Base 477 jobs	477	9		PILOT/Sales Tax	YES	Period of PILOT 10 Years		$1,940,000
1	Flying Bison	Jun-14	$2,500,000	85% threshold $2,125,000	100% Base 5 jobs	5	4		PILOT/SalesMortgage Tax	YES	Period of PILOT 7 Years	No Sales Tax for Retail Tasting Room Buildout	$372,500
1	A. Titan	Jun-14	$4,215,000	85% threshold $3,582,750	100% Base 30 jobs	30	9		Sales/ Mortgage Tax	YES	2 years or Termination of Sales Tax		$106,750
1	Fisher Price	Jun-14	$8,000,000	85% threshold $6,800,000	100% Base 750 jobs	750			Sales Tax	YES	2 years or Termination of Sale Tax		$565,000
1	Curtis Buffalo	Jun-14	$18,100,000	85% threshold $15,385,000			29		Sales/ Mortgage Tax	YES	2 years or Termination of Sale Tax	Retail Highly Distressed/Adaptive Reuse	$685,000
1	Simmers Crane(Rev. 6/13)	Jun-14	$2,140,000	85% threshold $1,819,000	100% Base 30 jobs	30	5		PILOT/SalesMortgage Tax	YES	Period of PILOT 10 Years		$503,000
1	Conventus Partners	Jul-14	$10,000,000	85% threshold $8,500,000				85% Construction 21 jobs	Sales/ Mortgage Tax	YES	2 years or Termination of Sales Tax	Relied on ESD Job Requirement for AMRI	$472,000

Project Matrix/Material Factors/Clawbacks

Count	Project Name	Approval Date	Project Amount	Investment	Material: Job Retent	Material: Jobs Retained	Material: Jobs Created	Terms	Clawback	Local Labor	Length of Term	Additional Findings	*Incentive Amount
1	Orchard Heights	Jul-14	$28,600,000	85% threshold $24,310,000	100% Base 42 FT & 61 PT jobs	72	13		PILOT/SalesMortgage Tax	YES	Period of PILOT 7 Years	Assisted Living Care Facility	$1,790,000
1	Cameron Compression	Aug-14	$6,560,652	85% threshold $5,576,554	100% Base 584 jobs	584			Sales Tax	YES	2 years or Termination of Sales Tax	Includes Asset Sale Restriction	$183,000
1	Conserve	Aug-14	$1,400,000	85% threshold $1,190,000	100% Base 100 jobs	100	40		Sales Tax	N/A	2 years or Termination of Sales Tax	Purchase of Equipment Only No Labor Anticipated	$122,500
1	Unifrax 1, LLC (Firetower)	Aug-14	$33,000,000	85% threshold $28,050,000	100% Base 268 jobs	268	25		PILOT/SalesMortgage Tax	YES	Period of PILOT 10 Years		$1,273,000
1	Unifrax 1, LLC (NYCC)	Sep-14	$18,018,000	threshold $15,315,300			25		PILOT/Sales Tax	YES	Period of PILOT 10 Years		$1,208,580
1	Select One Holdings	Oct-14	$1,700,000	85% threshold $1,445,000	100% Base 14 FT & 2 PT jobs	15	6		PILOT/SalesMortgage Tax	YES	Period of PILOT 7 Years	Retail Highly Distressed/Adaptive Reuse/No Sales Tax for Vacant Space Buildout	$144,000
1	MacLean Curtis LLC	Oct-14			100% Base 165 jobs	165			PILOT	N/A	Period of Remaining PILOT 6 Years	Assumption of Existing PILOT	$346,800
1	1391 Hertel, LLC	Dec-14	$5,411,625	85% threshold $4,599,881			4		Sales/ Mortgage Tax	YES	2 years or Termination of Sales Tax	Adaptive Reuse	$236,000
1	Niagara Street Buffalo	Dec-14	$11,663,462	85% threshold $9,913,942			4		Sales/ Mortgage Tax	YES	2 years or Termination of Sales Tax	Adaptive Reuse	$420,846
1	483 Main Street	Dec-14	$1,065,000	85% threshold $905,250			2	85% Construction 22 jobs	Sales Tax	YES	2 years or Termination of Sales Tax	Adaptive Reuse	$35,000

Count	Project Name	Approval Date	Project Amount	Investment	Material: Job Retent	Material: Jobs Retained	Material: Jobs Created	Terms: Construction Jobs	Clawback	Local Labor	Length of Term	Additional Findings	Incentive Amount
Adaptive Reuse 2014 Sub Total	**10**		**$93,618,563**			**54**	**59**						**$3,506,146**
2014 Total	**25**		**$229,188,765**			**2805**	**399**						**$13,991,276**

*Incentive Amount does not include other public incentives ie: 485-a, Historic Tax Cre

Project Matrix/Material Factors/Clawbacks

Count	Project Name	Approval Date	Project Amount	Investment	Material Factors			Clawback	Local Labor	Length of Term	Additional Findings	*Incentive Amount	Pay Equity
					Jobs Retained	Job Creatio	Jobs Created						
1	Derrick Corp.	Jan-15	$1,150,000	85% threshold $977,500	477			PILOT/Sales Tax	YES	Period of PILOT 7 Years		$139,000	
1	Lazarus Properties	Jan-15	$2,483,000	85% threshold $2,110,550		85% -New 9 jobs	11	Sales/ Mortgage Tax	YES	2 years after Termination of Sales Tax	Adaptive Reuse	$92,000	
1	North American Salt	Mar-15	$8,100,000	85% threshold $6,685,000		85% -New 6 jobs	8	PILOT/Sales Tax	YES	Period of PILOT 7 Years	Amendment of January 2014 Approval	$1,428,500	
1	9271 Group 960 Busti	Apr-15	$6,960,000	85% threshold $5,916,000		85% -New 1 job	1	Sales/ Mortgage Tax	YES	2 years or Termination of Sales Tax	Adaptive Reuse/Retial Highly Distressed Finding	$339,000	
1	MSBP- 251 Main	Apr-15	$8,195,110	85% threshold $6,965,843	6	85% -New 1 job	1	Sales/ Mortgage Tax	YES	2 years or Termination of Sales Tax	Adaptive Reuse	$413,000	
1	Phoenix Brewery	Apr-15	$7,565,000	85% threshold $6,430,250		85% -New 1 job	1	Sales/ Mortgage Tax	YES	2 years or Termination of Sale Tax	Adaptive Reuse	$316,000	
1	Broadway Industrial Park	Apr-15	$6,480,000	85% threshold $5,508,000		85% -New 30 job	35	PILOT/Sales Tax	YES	Period of PILOT 7 Years	Spec Space/ Warehouse/ Manufacturing	$898,000	
1	500 Seneca LLC	May-15	$35,675,400	85% threshold $30,324,090	20	85% -New 13 job	15	Sales/ Mortgage Tax	YES		Adaptive Reuse/ Amendment of February 2014 Approval	$1,550,000	
1	Gordon Companies	May-15	$1,825,000	85% threshold $1,551,259	82	85% -New 5 job	6	PILOT/Sales Tax	YES	Period of PILOT 7 Years		$217,500	
1	432 Abbott, LLC	Jun-15	$4,570,000	85% threshold $3,884,500		85% -New 3 job	3	Sales/ Mortgage Tax	YES	2 years or Termination of Sale Tax	Adaptive Reuse	$94,250	
1	500 Parker, LLC	Jun-15	$3,458,192	85% threshold $2,939,463		85% -New 2 job	2	Sales/ Mortgage Tax	YES	2 years or Termination of Sale Tax	Adaptive Reuse	$78,800	
1	Orchard Heights Inc	Jul-15	$18,698,569	85% threshold $15,893,783	75	85% -New 11 job	14	PILOT/Sales Mortgage Tax	YES	Period of PILOT 7 Years		$2,468,672	
1	95 Pirson (MJ Mech)	Aug-15	$3,304,500	85% threshold $2,808,825	142	85% -New 26 job	31	PILOT/Sales Mortgage Tax	YES	Period of PILOT 10 Years		$860,250	
1	Sodexo	Aug-15	$6,076,002	85% threshold $5,164,600	511			Sales Tax	YES	Period of PILOT 10 Years		$467,000	

Project Matrix/Material Factors/Clawbacks

Count	Project Name	Approval Date	Project Amount	Investment	Material Jobs Retained	Factors Job Creatio	Factors Jobs Created	Clawback	Local Labor	Length of Term	Additional Findings	*Incentive Amount	Pay Equity
1	Uniland(Sodexo)	Aug-15	$21,058,095	85% threshold $17,899,380	511			PILOT/Sales Mortgage Tax	YES	Period of PILOT 10 Years		$3,921,440	
1	Shevlin Land & Cattle	Sep-15	$1,700,000	85% threshold $1,445,000	70	85% -New 8 job	10	PILOT/Sales Tax	YES	Period of PILOT 7 Years		$239,625	YES
1	240 Kensington LLC	Oct-15	$5,781,000	85% threshold $4,913,850		85% -New 1 job	1	PILOT/Sales Mortgage Tax	YES	Period of PILOT 10 Years	Market Rate Senior Housing Project	$478,750	YES
1	722 Group, Ellicott Dev.	Oct-15	$5,760,000	85% threshold $4,896,000		85% -New 2 job	2	Sales/ Mortgage Tax	YES	2 years or Termination of Sale Tax	Adaptive Reuse	$216,500	YES
1	Flexovit USA, Inc..	Nov-15	$8,020,887	85% threshold $6,817,753	45	85% -New 30 job	36	PILOT/Sales Tax	YES	Period of PILOT 10 Years		$531,000	YES
1	486 Elmwood Buffalo LLC	Nov-15	$1,482,850	85% threshold $1,260,422		85% -New 2 job	2	Sales/ Mortgage Tax	YES	2 years or Termination of Sale Tax		$29,470	YES
1	Garrett Leather Corp.	Dec-15	$4,100,000	85% threshold $3,485,000	32	85% -New 8 job	10	Sales Tax	YES	2 years or Termination of Sale Tax		$70,000	YES
1	Pilgrim Village Assoc.	Dec-15	$94,778,000	85% threshold $80,561,300	4	85% -New 30 job	31	Sales/ Mortgage Tax	YES	2 years or Termination of Sale Tax	Mixed Use Affordable Housing	$1,913,281	YES

Count	Project Name	Approval Date	Project Amount	Investment	Material Jobs Retained	Factors Job Creatio	Factors Jobs Created	Clawback	Local Labor	Length of Term	Additional Findings	Incentive Amount	Pay Equity
Adaptive Reuse 2015 Sub Total	8		$74,666,702		26		36					$3,099,550	
2015 Total	22		$257,221,605		1975		220					$16,762,038	
Adaptive Reuse 2013 -15 Total	23		$278,664,936		80		150					$17,007,308	
2013-15 Total	67		$741,246,483		7131		995					$62,996,661	

*Incentive Amount does not include other public incentives ie: 485-a, Historic Tax Credits, etc

Project Matrix/Material Factors/Clawbacks

Count	Project Name	Approval D	Project Amount	Investment	Jobs Retained	Factors		Clawback	Local Labor	Length of Term	Additional Findings	*Incentive Amount	Pay Equity
						Job Creation	Jobs Created						
1	Triad Recycling	Jan-16	$2,993,000	85% threshold $2,544,050		85% -New 2 jobs	3	PILOT/Sales Mortage Tax	YES	Period of PILOT 7 Years		$149,300	YES
1	Alt Store, LLC	Jan-16	$6,900,000	85% threshold $5,865,000		85% -New 27 jobs	32	Sales/ Tax	YES	2 years after Termination of Sales Tax		$393,750	YES

Count	Project Name	Approval D	Project Amount	Investment	Jobs Retained	Factors		Clawback	Local Labor	Length of Term	Additional Findings	Incentive Amount	Pay Equity
						Job Creation	Jobs Created						
Adaptive Reuse 2015 Sub Total	0			$0		0	0					$0	
2015 Total	2			$9,893,000		0	35					$543,050	

NYS EDC IDA Best Practices Working Group

Recapture Policy

Members:
Thomas Connolly - Town of Bethlehem IDA (connolly@mltw.com)
David Mingoia - Amherst IDA (dmingoia@amherstida.com)
Donald Alexander - Jefferson County IDA (dcalexander@jcida.com)
Margaret Churchill - Wayne County IDA/ Wayne County EDC (pchurchill@co.wayne.ny.us)
John Cappellino - Erie County IDA (jcappell@ecidany.com)
Brian McMahon - New York State Economic Development Council (mcmahon@nysedc.org)

DRAFT

Recapture Policy Best Practice Recommendation:

Below please find the language from the OSC legislation regarding Recapture Requirements

EACH AGENCY SHALL DEVELOP POLICIES FOR THE SUSPENSION OR DISCOTINUANCE OF FINANCIAL ASSISTANCE, OR FOR THE MODIFICATION OF ANY PAYMENT IN LIEU OF TAX AGREEMENT TO REQUIRE INCREASED PAYMENTS UNDER CIRCUMSTANCES AS SPECIFIED IN THE POLICY, WHICH MAY INCLUDE BUT SHALL NOT BE LIMITED TO EVENTS OF MATERIAL VIOLATION OF THE TERMS AND CONDITIONS OF A PROJECT AGREEMENT.

EACH AGENCY SHALL DEVELOP POLICIES FOR THE RETURN OF ALL OR A PART OF THE FINANCIAL ASSISTANCE PROVIDED FOR THE PROJECT, INCLUDING ALL OR PART OF THE AMOUNT OF ANY TAX EXEMPTIONS, AS SPECIFIED IN THE POLICY, WHICH MAY INCLUDE BUT SHALL NOT BE LIMITED TO MATERIAL SHORTFALLS IN JOB CREATION AND RETENTION PROJECTIONS OR MATERIAL VIOLATIONS OF THE TERMS AND CONDITIONS OF PROJECT AGREEMENTS. ALL SUCH RETURNED AMOUNTS OF TAX EXEMPTIONS SHALL BE REDISTRIBUTED TO THE APPROPRIATE AFFECTED TAX JURISDICTION, UNLESS AGREED TO OTHERWISE BY ANY LOCAL TAXING JURISDICTION.

In the first paragraph there are two basics concepts relating to termination or modification of PILOT's

1. IDA's should have a written policy for the termination/discontinuance of PILOT's if a project does not meet or violates a material term or condition identified in the Inducement Resolution and or Project Agreement or IDA policy, or

2. IDA's should require increased PILOT payments if a project does not meet or violates a material term or condition of the Project Agreement or IDA Policy

The second paragraph generally outlines the Recapture Requirement

1. Each IDA shall have a Recapture Policy for all or a portion of assistance as specified in the IDA policy for material shortfalls in "Material Factors" which may include, but not limited to job creation and or retention projections, or material term of the IDA Project Agreement.

2. Requires that any Recapture funds be returned to the appropriate affected taxing jurisdictions unless otherwise agreed to by the taxing jurisdiction.

*Minimally our Best Practice Policy Recommendation needs to meet the above requirements:

Key Components

Purpose:
To establish a procedure and policy to be compliant with the new OSC legislation, that would establish Material Factors which would be used to determine if a company which is receiving IDA financial assistance is meeting the obligations required and stated in the IDA approval and project agreements, and if not, to establish a process to review and determine if a reduction, termination and/or recapture of financial assistance is required.

Material Factors:
For each project seeking financial assistance the IDA Board will establish Material Factor(s) which are to be defined and stated in the approving board resolution and project agreements. Material Factors should be explicit and measurable and may include items such as investment, job creation, retention or other factors as determined by the board. Material Factors may vary by project type or specific application. Each project approved by the IDA board will have identified material factors, which will be measured and evaluated to determine if a project receiving financial assistance has met and or continues to meet the required obligations as set by the IDA board at the time of project approval.

For certain numerical Material Factors such as, job creation, investment amount etc., it is recommended that each board set an acceptable achievement factor, which would constitute compliance with the Material Factor requirement, such as 85% of job creation or retention goals. For non-numeric factors each board should determine how the project will be evaluated to demonstrate that it has met the Material Factor requirement.

Each IDA board may consider a number of Evaluative Criteria when determining whether to approve a project for financial assistance, however a Material Factor shall differ from Evaluative Criteria in that it should be directly measurable and will be utilized to determine whether a project has met its requirements under the condition of project approval and project agreement.

*A separate best practice group is working on recommendations for Evaluative Criteria based on project type.

Material Factor Monitoring:
Each IDA shall develop a reporting/monitoring system to determine whether the Material Factors have been met or are being met over the term of the financial assistance, such as the duration of the PILOT agreement. Some Material Factors may be required and complied with over the term of the financial assistance, i.e. jobs, others may be a onetime check, i.e. project investment. For Material Factors that are multi-year, IDA's should monitor for compliance on at least an annual basis, and for the full term of the financial assistance period. Upon project approval the IDA Board should be explicit in its project approvals the Material Factors which the project will be evaluated for, the measurable criteria, and the term for which each factor will be monitored.

Monitoring reports maybe provided directly by the project applicant, from IDA staff, field visits, or through various other methods as determined by the IDA Board. Monitoring efforts should be documented in writing to verify compliance with Material Factor requirements.

Monitoring and compliance reports should be presented to the Board of Directors on an annual basis. If it is determined that a project receiving financial assistance has not met or maintained compliance with a Material Factor, term or condition of the project agreement, or any other condition as set by the board, each IDA shall develop a procedure to resolve non-compliance issues, or any undertake termination, reduction or recapture efforts

Non-Compliance Process:

If a company is found to be in violation or non-compliant with a Material Factor during the course of the compliance period, the IDA shall have a written procedure to determine if an action by its Board is necessary.

If during the annual monitoring and or reporting period it is found that a company which is receiving financial assistance which shall be defined as Sales, PILOT or Mortgage Recording Tax incentives, the IDA shall undertake the following:

1. The IDA shall notify the company in writing that in the Agency's determination they are or have violated a Material Factor.
2. The company shall be given an opportunity to remedy the violation.
3. The IDA shall seek additional information/explanation from the company as to why a Material Factor was not achieved. These may include economic or natural factors that led to the default. These factors should be discussed and predetermined to the extent possible by the Board and may include items such as, natural disaster, industry dynamics, unfair competition or economic events that were outside the control of the company.
4. The company shall be provided the opportunity to present before the IDA Board or designated committee, any information as outlined in #3 above regarding why the Material Factor was not achieved.

Board Actions:

Actions regarding taking no action to recapture benefits, reduction, termination or recapture of financial assistance should be made by the IDA Board. The following options are recommended as considerations for IDA actions when considering Material Factor compliance or violations of terms and conditions of project agreements.

1. Upon a review of the facts regarding a non-compliance determination the IDA Board may determine that the cause of the non-compliance was a valid reason for not meeting the Material Factor and may consider the matter closed without further action, or set a specific time period to give the opportunity for the company to achieve compliance, this may also be accompanied by a period of increased reporting. (ie: Review violated Material Factor(s) quarterly until remedied)

2. If a company is ultimately unable to meet a Material Factor or is in continued violation of the terms and conditions as set forth in the project agreement, the IDA Board shall develop procedures and policies which will define when it will take actions regarding reduction,

termination or recapture of financial assistance. Below are listed several best practice options that may be undertaken

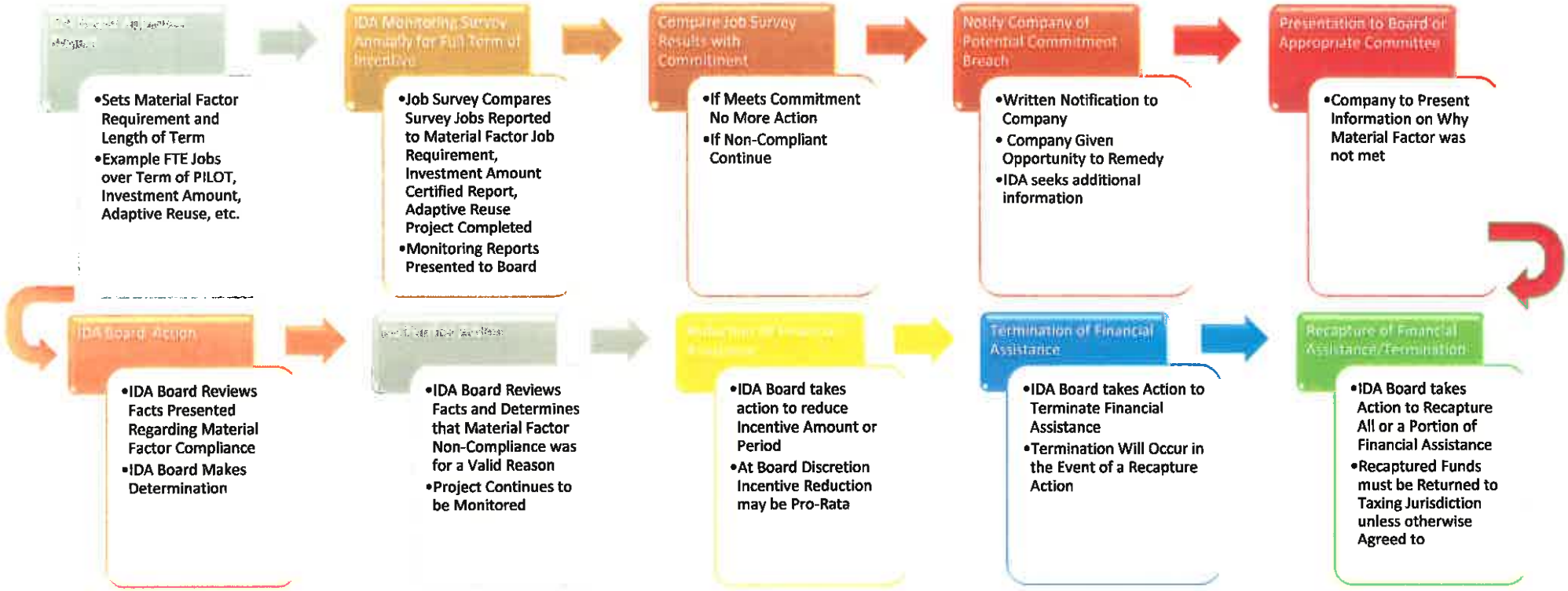
Reduction of Financial Assistance: At the discretion of the IDA Board, it may consider a reduction in assistance as an appropriate action to take in the event of a Material Factor or project agreement non-compliance. The reduction may be set at the sole discretion of the board, or may be based on a pro-rata basis, depending on the extent of the Material Factor non-compliance. As an example a project may have met 3 out of 4 Material Factors and the board could consider a 25% reduction in PILOT scheduled abatements, or a project may have only met 80% of a specific Material Factor, ie: job creation or investment and a 20% reduction in assistance may be considered. This same pro-rata concept may be applied to Material Factors which are multi-year and are enforced over the term of a PILOT, ie: project met job retention goals for 8 of 10 years etc.

Termination of Financial Assistance: In addition to the typical reasons why an IDA may act to terminate financial assistance such as, closure, change of use, change of ownership etc., an IDA Board may elect to terminate any ongoing financial assistance to a company. Reasons for termination should be explicit and may include continued non-compliance with a Material Factor, continued violation of the terms and conditions of the Project Agreement, failure to comply with ongoing reporting or compliance requirements of the agency, and an action by the IDA Board to recapture financial assistance which shall be accompanied by a termination of ongoing financial assistance.

Recapture of Financial Assistance: An IDA Board may take action to Recapture a portion or all of the Financial Assistance provided to a company. Actions to Recapture shall be made by decision of the IDA Board and shall be reserved for continued and/or severe violations of Material Factors or the terms and conditions of the Project Agreement. An event leading to recapture may include: an applicant knowingly providing false information on an application or a compliance/monitoring report: IDA Board finding that the company did not make a good faith effort or have any intention of meeting a Material Factor or a term and condition of the Project Agreement: the company ceases operations and/or relocates prior to fulfilling the length of term for a Material Factor: the company demonstrates a wanton disregard for state and or local laws or regulations.

In the event an IDA is successful in receiving Recaptured Financial Assistance such funds shall be returned to the appropriate affected taxing jurisdictions unless otherwise agreed upon by the local taxing jurisdiction.

Recapture/Clawback Process – Material Factor(s)



NYS EDC IDA Best Practices Working Group

Project Evaluation Criteria

Members:

Rene VanShaack - Greene County IDA (rene@greeneida.com)
Jaime McGill (jaime.mcgill@yonkersida.com)
Sarah Lee - Dutchess County EDC (slee@dcedc.com)
Margaret Churchill - Wayne County IDA/ Wayne County EDC (pchurchill@co.wayne.ny.us)
John Cappellino - Erie County IDA (jcappell@ecidany.com)
Brian McMahon - New York State Economic Development Council (mcmahon@nysedc.org)

Activities to Date:

Subject: IDA Best Practices Working Group - Project Evaluation Criteria Subcommittee

Below please find the language from the OSC legislation regarding Recapture Requirements

(B) A WRITTEN COST-BENEFIT ANALYSIS BY THE AGENCY THAT IDENTIFIES THE EXTENT TO WHICH A PROJECT WILL CREATE OR RETAIN PERMANENT, PRIVATE SECTOR JOBS; THE ESTIMATED VALUE OF ANY TAX EXEMPTIONS TO BE PROVIDED; THE AMOUNT OF PRIVATE SECTOR INVESTMENT GENERATED OR LIKELY TO BE GENERATED BY THE PROPOSED PROJECT; THE LIKELIHOOD OF ACCOMPLISHING THE PROPOSED PROJECT IN A TIMELY FASHION; AND THE EXTENT TO WHICH THE PROPOSED PROJECT WILL PROVIDE ADDITIONAL SOURCES OF REVENUE FOR MUNICIPALITIES AND SCHOOL DISTRICTS; AND ANY OTHER PUBLIC BENEFITS THAT MIGHT OCCUR AS A RESULT OF THE PROJECT;

The language in the new law requires a written cost-benefit analysis, that includes an evaluation of a number of criteria to be documented and presented to the IDA Board as part of their consideration to provide incentives. These include:

- Extent to Which a project will create or retain permanent jobs
- Estimated Value of Tax Exemptions to be provided
- Amount of private sector investment
- Likelihood of project being accomplished in a timely fashion
- The extent of new revenue provided to local taxing jurisdictions
- Any other misc. public benefits that might occur

While it is understood that IDA's will need to provide documentation on the specific evaluative criteria as identified in the statute, it is also understood that evaluative criteria should vary depending on project type.

Goal:
To establish a list of various Project Types, in an effort to differentiate projects for the purpose of establishing appropriate and in some cases unique "Evaluative Criteria" for IDA Board's to consider in providing incentives. The listing shall include Best Practice recommendations suggesting specific and unique evaluation categories for project type and an evaluation or measurable element if appropriate.

DRAFT PROJECT TYPE LISTING
Evaluative Criteria

As per the new State Law requirement each project must include a **written cost benefit analysis** and be evaluated using the criteria listed below:

- **Extent to Which a project will create or retain permanent jobs**
- **Estimated Value of Tax Exemptions to be provided**
- **Amount of private sector investment**
- **Likelihood of project being accomplished in a timely fashion**
- **The extent of new revenue provided to local taxing jurisdictions**
- **Any other misc. public benefits that might occur**

Material Terms

In addition, as a best practice recommendation IDA Boards, at the time of project approval, should identify "Material Terms" which will be used to determine if a project applicant has met the obligations required for the approval of incentives that were set by the board. These "Material Terms" will be utilized by the board in setting and monitoring project benchmarks during the term of the incentives for the purposes of administering the IDA's Recapture Policy.

It is understood that these "Material Terms" may vary depending on project type and project specifics. Some "Evaluative Criteria" may be defined by the IDA Board as a "Material Term" for the purposes of recapture, but not all Evaluative Criteria may or should be defined as Material Terms.

As a best practice IDA Boards should consider developing additional Evaluative Criteria for specific project types. These criteria should be specifically defined per project type and should include a measurable component where possible. Evaluative Criteria should be considered during the application and project approval process as items that the IDA Board evaluated as part of a deliberative approval process.

See Attached Table for Suggested Project Types, Material Terms and Evaluative Criteria:

* **The suggested Material Terms and Evaluative Criteria in the attached table, are not meant to be adopted in their entirety as a best practice, but rather as a list from which an IDA could choose from. Each IDA should consider its own local economic development environment, strategy and objectives when reviewing and determining its Material Terms and Evaluative Criteria.**

In addition, for some Project Types a unique application section is recommended to gather additional information or data relating to evaluative criteria specific to that project type. As an example, see an attached sample application subsection for Adaptive Reuse projects.

NYSEDC Best Practice Recommendations Project Type Matrix
Required State Criteria, Material Terms & Evaluative Criteria

State Required Criteria	Project Type	Material Terms (Suggested)	Evaluative Criteria (Suggested)
1. Extent to which a project will create or retain permanent jobs 2. Estimated value of tax exemptions	**Manufacturing, Warehouse, Distribution**	1. Create or Retain Jobs 2. Private Sector Investment 3. Local Labor Construction 4. Wage Rates above Median Wage for Area	1. Wage Rates (above Median Wage for Area) 2. Regional Wealth Creation (% Sales/Customers Outside Area) 3. In Region Purchases (% of overall Purchases) 4. Research and Development Activities 5. Investments in Energy Efficiency 6. Locational Land Use Factors, Brownfields or Locally Designated Development Areas 7. LEED/Renewable Resources 8. Retention/Flight Risk
3. Amount of private sector investment 4. Likelihood of project being accomplished in a timely fashion 5. Extent of new revenue provided to local taxing jurisdictions 6. Any other misc. public benefits	**Agricultural, Food Processing**	1. Create or Retain Jobs 2. Private Sector Investment 3. Local Labor Construction 4. Wage Rates above Median Wage for Area	1. Wage Rates (above Median Wage for Area) 2. Regional Wealth Creation (% Sales/Customers Outside Area) 3. In Region Purchases (% of overall Purchases, from Local Growers) 4. Research and Development Activities 5. Investments in Energy Efficiency 6. Locational Land Use Factors, Proximity to Local Ag. Production 7. LEED/Renewable Resources 8. Retention/Flight Risk

NYSEDC Best Practice Recommendations Project Type Matrix
Required State Criteria, Material Terms & Evaluative Criteria

State Required Criteria	Project Type	Material Terms (Suggested)	Evaluative Criteria (Suggested)
1. Extent to which a project will create or retain permanent jobs 2. Estimated value of tax exemptions 3. Amount of private sector investment 4. Likelihood of project being accomplished in a timely fashion 5. Extent of new revenue provided to local taxing jurisdictions 6. Any other misc. public benefits	**Adaptive Reuse, Community Development**	1. Private Sector Investment 2. Retain or Create Jobs (if applicable) 3. Local Labor Construction 4. Increased Property Value 5. Increased Revenue to Local Taxing Jurisdictions	1. Distressed Census Tracts 2. Age of Structure 3. Elimination of Slum and Blight 4. Building or Facility Vacancy 5. Redevelopment Supports Local Community Development Plan 6. Environmental or Safety Issues 7. LEED/Renewable Resources 8. Building or site has Historic designation 9. Site or Structure has delinquent Property or other local Taxes 10. Project/Developer's Return on Investment 11. Impediments to Conventionally Finance Project
	Tourism	1. Private Sector Investment 2. Create or Retain Jobs (if applicable) 3. Local Labor Construction 4. Regional Wealth Creation (% Sales/Customers Outside Area)	1. Market Study (Document Demand and Impact on Existing Operators) 2. Regional Wealth Creation 3. Proximity/Support of Regional Tourism Attractions/Facilities 4. Local Official(s), Convention Visitors Bureau Support 5. In Region Purchases, Support of Local Vendors 6. LEED/Renewable Resources 7. Generation of Local Revenues (i.e. Hotel Bed Taxes)

NYSEDC Best Practice Recommendations Project Type Matrix
Required State Criteria, Material Terms & Evaluative Criteria

State Required Criteria	Project Type	Material Terms (Suggested)	Evaluative Criteria (Suggested)
1. Extent to which a project will create or retain permanent jobs 2. Estimated value of tax exemptions 3. 4. Amount of private sector investment 5. Likelihood of project being accomplished in a timely fashion 6. Extent of new revenue provided to local taxing jurisdictions 7. Any other misc. public benefits	**Retail**	1. Private Sector Investment 2. Create or Retain Jobs (if applicable) 3. Local Labor Construction 4. Regional Wealth Creation (% Sales/Customers Outside Area)	1. Market Study/Goods or Services Not Readily Available, Impact on Existing Businesses (Municipal CEO approval) 2. Regional Wealth Creation 3. Highly Distressed Census Tracts 4. Urban or Town Center Location 5. Elimination of Slum and Blight 6. Alignment with Local Planning and Development Efforts
	Back Office, Data, Call Centers	1. Private Sector Investment 2. Create or Retain Jobs (if applicable) 3. Local Labor Construction 4. Wage Rates above Median Wage for Area	1. Wage Rates (above Median Wage for Area) 2. Regional Wealth Creation (% Sales/Customers Outside Area) 3. In Region Purchases (% of Purchases from Local Vendors) 4. Supports Local Business or Cluster 5. Retention/Flight Risk 6. LEED/Renewable Resources

NYSEDC Best Practice Recommendations Project Type Matrix
Required State Criteria, Material Terms & Evaluative Criteria

State Required Criteria	Project Type	Material Terms (Suggested)	Evaluative Criteria (Suggested)
1. Extent to which a project will create or retain permanent jobs 2. Estimated value of tax exemptions 3. Amount of private sector investment 4. Likelihood of project being accomplished in a timely fashion 5. Extent of new revenue provided to local taxing jurisdictions 6. Any other misc. public benefits	**Energy Production**	1. Private Sector Investment 2. Create or Retain Jobs (if applicable) 3. Local Labor Construction 4. Wage Rates above Median Wage for Area	1. Wage Rates (above Median Wage for Area) 2. In Region Purchases (% of Overall Purchases, Local Construction Jobs/Suppliers) 3. Advances Renewable Energy Production/Transmission Goals 4. Provides Capacity or Transmission to Meet Local Demand or Shortage
	Market Rate Senior Housing	1. Private Sector Investment 2. Create or Retain Jobs (if applicable) 3. Local Labor Construction 4. Senior Residents at or Below Median Income for Community	1. Market Study (Document Need and Impact on Existing Facilities) 2. Highly Distressed Census Tract 3. Alignment with Local Planning and Development Efforts 4. Urban, Town/Village Center Location 5. Local Official(s) Support 6. Located in Areas that Serve Below Median Income Seniors 7. Facility Promotes Walkable Community Areas 8. Review of Project/Developer's Return on Investment 9. Ability to Conventionally Finance 10. Provides Specific Senior Amenities (Community Rooms, Health Services etc.) 11. Senior Residents at or Below Median Income for Community

NYSEDC Best Practice Recommendations Project Type Matrix
Required State Criteria, Material Terms & Evaluative Criteria

State Required Criteria	Project Type	Material Terms (Suggested)	Evaluative Criteria (Suggested)
1. Extent to which a project will create or retain permanent jobs 2. Estimated value of tax exemptions 3. Amount of private sector investment 4. Likelihood of project being accomplished in a timely fashion 5. Extent of new revenue provided to local taxing jurisdictions 6. Any other misc. public benefits	**Commercial Housing**	1. Private Sector Investment 2. Create or Retain Jobs (if applicable) 3. Local Labor Construction	1. Market Study (Document Unmet Need and Impact on Existing Facilities) 2. Highly Distressed Census Tracts 3. Alignment with Local Planning and Development Efforts 4. Urban or Town/Village Center Location 5. Local Official(s) Support 6. Located in Areas that have Inadequate Housing Supply 7. Facility Promotes Transit Oriented or Walkable Community Areas 8. Review of Project/Developer's Return on Investment 9. Impediments to Ability to Conventionally Finance Project

* **The suggested Material Terms and Evaluative Criteria are not meant to be adopted in their entirety as a best practice, but rather as a list from which an IDA could choose from. Each IDA should consider its own local economic development environment, strategy and objectives when reviewing and determining its Material Terms and Evaluative Criteria.**

Cappellino, John

From: Brian McMahon <mcmahon@nysedc.org>
Sent: Monday, January 25, 2016 11:55 AM
To: Brian McMahon
Subject: URGENT REQUEST
Attachments: Part R local opposition letter 12516.docx

To IDA Executive Directors:

Governor Cuomo's budget contains a proposal to require IDA projects financed by tax-exempt private activity bonds to be approved by the state Public Authority Control Board. The proposal is little more than an attempt by the state to control this part of local economic development activities.

It is important for legislators to know about this provision and we are asking local IDAs to do the following:

1. Contact your Senator and Assembly member in writing and by phone or in person and request they oppose this provision. A draft letter in Word format that you can cut and paste into your communications is attached. It would be very helpful if you could include a paragraph highlighting local projects you have financed using private activity bonds. If your agency hasn't financed any projects using PABs, it still would be important to alert your legislator about the usurpation of local control that would result from this proposal.
2. Ask your local elected officials to also contact their Senators and Assembly members. Their voice on this issue is important. Feel free to share this draft with them, as well.

As always, contact me if you have any questions. In the meantime, thanks in advance for your prompt response to this request.

Brian McMahon

Letter to your legislator regarding the Governor's budget proposal to require state approval by the Public Authorities Control Board of projects financed by IDAs with tax-exempt private activity bonds

Dear (Legislator):

Part R of the Article VII TED budget legislation would require projects financed by local Industrial Development Agencies with tax-exempt private activity bonds subject to the bond volume cap be approved by the Public Authority Control Board (PACB).

The PACB was created by Chapter 38 of the Laws of 1976 to monitor and approve state public authority debt in response to a growing amount of state public debt issued by state public authorities, which contributed significantly to the New York State/New York City fiscal crisis of the mid-1970s. The law requires eleven statewide public authorities to receive a resolution of approval from the PACB prior to entering into project-related financings.

Tax-exempt private activity bonds issued by Industrial Development Agencies are not debt or obligations of the state, the local government served by the IDA, or the IDA. These bonds are singularly the obligation and liability of the borrower, and such assertions are prominent in the covenants contained in the bond documents.

These bonds can be used to finance very specific types of projects authorized in IRS regulations, including manufacturing, affordable housing, pollution control equipment, and waste disposal facilities, for example.

In 1986, congress and the president enacted comprehensive tax reform which, among other things, limited the amount of tax-exempt private activity bonds that could be issued in a state. The bond volume cap was established as a per capita dollar amount. The law established a 50-50 allocation of tax-exempt private activity bond capacity for statewide and local issuers. However, the law allowed states to establish different allocations that better suited their unique circumstances and conditions. New York responded by creating a law that allocated tax-exempt PABs according to the following formula: one-third for state issuers; one-third for local issuers (IDAs); and one-third for a bond reserve that could be accessed by state or local issuers should they exhaust their local allocation but still have projects to be financed.

Today, the federal formula allocates $100 times the population of the state. So, New York is awarded just under $2 Billion in PAB capacity, one third of which is reallocated to local IDAs.

This formula established state control of its allocation and local control of bond capacity allocated to IDAs. The assertion of state control over local allocation contained in the Governor's budget casts aside the principle of local control of the local allocation of the state volume cap.

Because these local projects have no impact on state debt, and because Part R would eliminate the principle of local control provided in the current statute, which has operated effectively for 29 years, the (Your organization) requests your opposition to Part R of the Article VII TED budget legislation, and that it not be included in the final adopted state budget.

Hocieniec, Carrie

Subject: FW: Mortgage Recording Tax

From: David State [mailto:David_State@nfta.com]
Sent: Tuesday, December 22, 2015 8:49 AM
To: richardlipsitz2@gmail.com
Cc: Weathers, Steve <sweathers@ecidany.com>; Cappellino, John <jcappell@ecidany.com>; Schoeppich, Andrew <aschoeppich@ecidany.com>; Brenda McDuffie <bmcduffie@buffalourbanleague.org>
Subject: Mortgage Recording Tax

Richard:

I greatly appreciate our discussion about adding the Mortgage Recording Tax to the list of policy items to be discussed for the upcoming year.

I would appreciate it if you would consider putting this topic on the agenda.

Thanks!

Dave

David J. State, Esq.
General Counsel
Niagara Frontier Transportation Authority
181 Ellicott Street, 6th Floor
Buffalo, New York 14203
O – 716.855.7686
David_State@nfta.com
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BUFFALO NIAGARA
PARTNERSHIP

December 30, 2015

Mr. Richard Lipsitz
Chair, ECIDA Policy Committee
ECIDA
95 Perry Street, Ste. 403
Buffalo, New York 14203

Dear Richard:

The Buffalo Niagara Partnership, per your request December 3, 2015, welcomes the opportunity to submit recommendations for the 2016 Work Plan. As you requested, we have outlined both specific items on the existing 2015-2016 Work Plan that should be removed from discussion as well as recommended items we believe will build on the current momentum and drive economic development - more private sector jobs and investment - in Erie County.

The landscape in New York State and Erie County has changed and the ECIDA needs to adapt/change with it to ideally accelerate, but at least maintain, this momentum.

We recommend the following items on the current 2015-2016 Work Plan be removed as they either limit the ability to encourage private sector job growth and investment or are ambiguous:

- Living wage
- But-For-Test/ROI
- ECIDA/Local Community/Applicant Role in Defining Community Benefit
- Union Neutrality/Card Check

The remaining items, Adaptive Reuse/Targeted Areas, Tiered Incentive Scoring and PILOT Schedules and MWBE should remain items on the 2016 Work Plan. These items need to be discussed with an understanding of the current plan and resources for economic development, how the policies of the ECIDA align with those and agreement on the goals the ECIDA is trying to achieve for Erie County. In order to accomplish this, the Partnership is recommending the following next steps:

1. Education on and adoption of the One Region Forward Plan

2. Assessment of resources for economic development (State, County, Local).
    a. What are the current plans for/to guide private sector growth in Erie County (REDC Target Sectors, 1RF, CEDS, etc.)?

3. Audit existing ECIDA tools to determine which are in alignment with these resources

4. Perform an analysis of existing conditions in Erie County

5. Identify tools/resources available that are currently not being used and best practices from other regions

6. Identify gaps

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We believe this approach is needed and will help guide future policy decisions. We need to know what we are trying to incentivize and how the current policies accomplish that goal(s). This process we believe will get us to that end.

In summary, we believe the policies should:

- Be "investment oriented" –programs and activities that will improve the fundamental competitiveness of the community over the long term while also addressing the more immediate concerns an employer may have prior to investing. When done right, the benefit to the community will remain even if the business closes its doors by improving the community's ability to attract and grow "replacement" companies.

- Align with NYS Economic Development programs to maximize the positive impact on jobs and private sector investment

- Align with Regional planning efforts

- Encourage growth and investment with an emphasis/special criteria for areas that may not be attractive for investment– brownfield sites, properties with limited parking, urban infill or "vertical brownfields", etc.

- Are competitive with other investment alternatives – we want to keep the investment in our community; not directed elsewhere.

Thank you for the opportunity to comment on the 2016 Work Plan.

Sincerely,

Laura Smith
VP, Buffalo Niagara Partnership

CC: ECIDA Policy Committee Members

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

January 4, 2016

Richard Lipsitz, Chairman
Policy Committee
Erie Co. Industrial Development Agency
95 Perry Street, 4th Floor
Buffalo, New York 14202

Re: 2016 Policy Committee Agenda Items

Dear Richard:

The past year was a very productive year for the Policy Committee ("Committee) of the Erie County Industrial Development Agency ("ECIDA"). I thank you for your great work as Chairman of the Committee in shepherding through to passage important policies related to pay equity, tax scofflaw and senior housing matters, as well as ensuring fundamental fairness and objectivity in the approving of tax incentive benefits for applicants.

I also thank you for your leadership in proposing a review of the agenda for the Committee. The work of the Committee is important and I appreciate your willingness to open the agenda for discussion and recommendations. Below are a few suggestions of mine for items to be either retained on the agenda or be newly considered by the Committee as it progresses onward with its work in 2016:

End Culture of Entitlement/Implementation of a "But For" Test

The ECIDA serves an important function for our community: using the tools at its disposal it can incentivize a company or developer to invest in Erie County, thereby creating both new jobs and net economic wealth for the entire community. The definition of the word incentive needs to be remembered by all when we perform our tasks as fiduciaries for the greater community. The word "incentive" means to motivate or encourage a party to take action or do something it might not otherwise do. I believe we need to be reminded of this fact when we review every request for assistance because we should not be providing tax inducements and other incentives for projects that will commence even if the inducement is not provided.

I believe an incentive should be regarded as a carrot to get a party to perform a task it might not normally do, in this situation creating fifteen (15) new jobs rather than only two (2), rather than an incentive being the proverbial cherry on the top of the sundae rewarding the company a tax break for an action it would otherwise take. During the past four (4) years we have changed the culture of many companies and developers in our region who thought they were "entitled" to a tax incentive even if they were going to do the project anyway without the incentive, or no jobs were to be created by the project.

While we have generally changed the culture of many, others still believe they are entitled to a tax incentive for any and every project they propose even if there is no true benefit for the greater community. During the past four (4) years we have created a culture of fairness and accountability, with benefits flowing to not only an applicant for tax incentives but also the greater community. It is essential this underlying philosophy continues in the year ahead as the Committee performs its tasks.

While we have accomplished much, I believe the ECIDA and the Committee must continue to work towards ending the culture of entitlement some persist in having, and the best way to do so is to ensure every project passes a "But For" test. In other words, we must ensure that an applicant would not pursue said project, or would not increase the job count of a prospective project to the same degree, without the provision of the benefits and tax incentives offered by the ECIDA. The benefits provided by the ECIDA should be true "incentives," the carrot to make a party do something it would not otherwise do, not an extra reward for an action or development that would otherwise occur.

Our responsibility as fiduciaries for the citizens of Erie County is not to guarantee the developer or company make the most profit possible from a project seeking tax incentives, but that we create good paying jobs and develop new net economic wealth for the greater community. Thus I ask the Committee to retain on its agenda the "But For" test and consider discussing the matter at meetings in the upcoming year on how to properly implement such a policy for the ECIDA.

<u>One Region Forward/Alignment with Erie County and REDC Strategies</u>

As you know, in June 2013 I released an economic development plan entitled, "Initiatives for a Smart Economy," and in March 2015 I released a health and human service plan entitled, "Initiatives for a Stronger Community." The initiatives in both documents were intentionally aligned with the work of the Regional Economic Development Council for Western New York ("REDC") "Strategy for Prosperity," the Buffalo Billion, One Region Forward, and other important state and local plans and efforts.

In order to ensure that limited resources are best maximized so western New York's current resurgence continues, there must be intentional alignment with the principles and recommendations of the REDC and One Region Forward. As such, alignment with regionally significant planning documents and efforts should be adopted as an underlying philosophy of both the ECIDA Board of Directors (the "Board") and the Committee. It is important to note the ECIDA has sought alignment in the past (when it adopted Erie County's Framework for Regional Growth in 2007) and it should likewise seek alignment again.

To that end, I further recommend the Committee invites the REDC and One Region Forward to give presentations on their recent efforts and how ECIDA current and future policies can support them. When the Committee is ready, it should take a formal vote to align its actions with the principles that underlie the work of the REDC and One Region Forward, and recommend the full Board ratify such action.

Simultaneously, the Board should task the staff to review and report back on the best practices in economic development that are consistent with these principles. Such review should not be limited to a regional or even statewide analysis, but should explore all options, including the best practices being nationwide. For example, in 2015 members of the ECIDA staff and Board met with Cecilia Estolano, who is an expert in sustainable economic development and urban revitalization. Her firm, Estolano LeSar

Perez Advisors, LLC, routinely counsels agencies such as ours on implementing best practices and the Board may wish to seek her guidance, and/or that of others like her, again.

Tiered/Graduated Incentives

I request the Committee to begin a discussion of "tiered/graduated incentives," which can be an avenue to ensure alignment with the principles of the REDC and One Region Forward and may support implementation of best practices. For example, "tiered incentives" could be used to provide extra support to smart growth, sustainable, transit oriented projects that are aligned with existing efforts and resources, foster development patterns that are economically sustainable, and are otherwise good for this community. A discussion related to tiered incentives should review all tax incentives currently offered by the ECIDA: property, sales and mortgage tax.

A review of "graduated incentives" would entail examining the current structure of incentives provided to determine whether our incentive structure is too generous. For example, in all property tax inducement packages, a payment in lieu of taxes agreement ("PILOT") is entered into with an applicant. The PILOT will generally require payment of all taxes due and owing at the pre-addition/renovation level, and the additional taxes to be paid on the increased valuation of the property will be prorated by a certain percentage of the new value for all future years of the PILOT. Often the proration will range from ten percent (10%) to no more than thirty percent (30%) of the new value for the life of the PILOT, even if the PILOT lasts for seven years or longer.

I request the Committee to review the current property tax inducement packages offered by the ECIDA to examine if the percentage of abatement is fair to underlying taxing entities, as well as all other taxpayers. I also request the Committee to review a more graduated system where an applicant receives the greatest benefit in the early years and the PILOT payment is gradually increased to a larger amount as time progresses (i.e. in a ten (10) year PILOT for the first year of the PILOT the applicant pays only ten percent (10%) of the new value in taxes, twenty percent (20%) in year two (2), thirty percent (30%) in year three (3), and so on through the life of the PILOT).

First Source Hiring Policies

I request the Committee to examine implementation of a local hiring or "First Source" hiring policy for applicants seeking tax incentives from the ECIDA. As you may know, First Source hiring is a principle in which companies located in a specified area or those receiving an incentive are required to hire a certain percentage of their workforce from residents in the surrounding census tract, zip code, or other geographical measurement mechanism. Communities such as Los Angeles, California, Sacramento City and County, California, San Francisco County, California, Denver, Colorado, and Pittsburgh, Pennsylvania all have implemented a full or modified First Source hiring plan.

In many ways, the ECIDA has already implemented a First Source hiring requirement as it pertains to construction projects when the ECIDA Board passed a Local Labor Certification Policy in May, 2013. Passage of the Local Labor Certification Policy has not negatively impacted construction in our region, and has resulted in almost all construction jobs related to an ECIDA project going to a resident of western New York.

At this time of great development and investment in our community, it is important that residents of the neighborhoods where such investment is occurring not be shut out from the jobs created there. Therefore, I am requesting the Committee to examine whether a First Source hiring policy should be implemented by the Board in regard to any permanent jobs created as a result of the inducement offered by the ECIDA, and to review the applicable geographic unit of measurement to be used to effectively enforce such a policy.

Workforce Development

Workforce development should also be an important item on the Committee's Agenda. As you know, strengthening the connection between the ECIDA and the Buffalo and Erie County Workforce Investment Board, Inc. ("WIB") was an initiative I proposed in "Initiatives for a Stronger Community." I am pleased that this work has already begun but more must be done. Although unemployment in the region is down, many segments of the population are not benefiting from our community's resurgence. Some census tracts in the City of Buffalo show poverty rates of 60%-80%. Often, individuals face barriers to employment including childcare, transportation, and criminal records.

Since the release of "Initiatives for a Stronger Community," the Buffalo-Niagara region has been selected by the Aspen Institute to participate in a nation-wide learning exchange on workforce development made possible by a grant from the United States Department of Commerce. This learning exchange should help our region understand and develop best practices for workforce efforts that connect people in need with jobs and opportunity.

Therefore, I ask the Committee to study the workforce efforts currently underway and then consider the development of a policy that connects employers seeking tax incentives from the ECIDA with individuals seeking jobs through the workforce system. A presentation by the WIB and those involved in the Aspen Learning Exchange (which includes Committee members Maria Whyte and Laura Smith) to the Committee would be instructive if you should move forward with this item. Additionally, this item could be reviewed in concert with a First Source Hiring Policy as the two (2) prospective policies each address a similar concept: employing individuals in high unemployment geographical areas.

Utilization of Minority and Women Business Enterprises

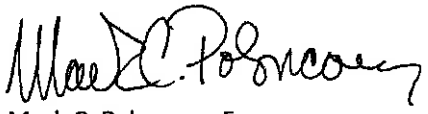
Utilization of Minority and Women Business Enterprises ("MWBE") is an already existing item on the policy agenda and I request it stay on the agenda and be examined by the Committee in 2016. As you are likely aware, the Community Foundation for Greater Buffalo has convened a 'Racial Equity Roundtable' which includes several ECIDA Board members. The Racial Equity Roundtable will release a racial equity indicators report in 2016 that discusses racial disparities in our community in four areas: (1) income and wealth; (2) education and job readiness; (3) neighborhoods and quality of life; and (4) criminal justice. Similarly, the Partnership for the Public Good is poised to release a report detailing racial disparities in employment data.

Once the reports are released, the Committee should seek to understand them, determine how they can be used to create a fairer system of economic development benefitting all, not just the select

few, and present its findings to the greater Board. A policy on MWBE utilization and other measures may emerge as clear ways to address the findings in these important reports.

Once again, thank you again for your willingness to undertake suggestions and feedback on the 2016 policy agenda and thank you for your leadership as Chairman of this important committee. If you have any questions about my recommendations, please feel free to contact the undersigned at your earliest convenience or I invite you to follow-up with Deputy County Executive and ECIDA Policy Committee member, Maria Whyte. She can be reached at maria.whyte@erie.gov or by calling 716-858-8500.

Very truly yours,



Mark C. Poloncarz, Esq.
Erie County Executive
ECIDA Board Member

MCP/mt

cc: Brenda McDuffie, Chairwoman, ECIDA
Steve Weathers, Pres. & CEO, ECIDA
Maria R. Whyte, Dep. County Executive

Hocieniec, Carrie

Subject: FW: ECIDA Policy Committee

From: Dave Mingoia [mailto:DMingoia@amherstida.com]
Sent: Tuesday, January 05, 2016 1:49 PM
To: Cappellino, John <jcappell@ecidany.com>
Cc: James Allen <jallen@amherstida.com>; richardlipsitz2@gmail.com
Subject: ECIDA Policy Committee

Thank you for the opportunity to share our thoughts on the 2016 Work Plan for the ECIDA Policy Committee. IDAs were created by NYS in 1969 as a vehicle to promote economic development and private investment in communities across the state. The law, even with its flaws, envisioned that the economy is ever changing and our role now includes working on a diversified portfolio that includes adaptive reuse and housing, which play a vital role in the innovation economy.

Our focus should be two fold in 2016 and beyond:

Promote Economic Development

We should not enact policies that duplicate established State and Federal laws and regulations. New or revised policies should further our mission and continue momentum that this agency has worked several years to achieve in the City of Buffalo and the suburbs. Additionally, we should continue to evaluate any proposal on how it impacts Erie County's competitive position in relation to neighboring counties and other competitors for investment. Specifically, we should move the following to the forefront:

- Reuse and Repurposing of sites and buildings in targeted areas – use "One Region Forward" and other strategies to define targeted areas
- Re-evaluate and modify the Tiered Scoring System
- Examination of the PILOT schedules

IDA Leadership Council

I've been one of the more vocal advocates for retaining a Countywide Policy that all IDAs in Erie County operate under. Success and growth of our economy occurred under conditions of cooperation that no longer pitted city versus suburb or town versus town. Cooperation is strained due to the unilateral actions of the ECIDA implementing policies without any input from other IDAs. This, "take it or leave it" or top-down approach should not continue and is inconsistent with the 2001 and 2005 MOUs every IDA signed and Section XII of the Uniform Tax Exemption Policy adopted in 2010. The UTEP states the following:

> IDA Leadership Council
> *To encourage further collaborative efforts among the IDAs, to facilitate the uniform implementation of the Countywide Policy, and to provide a forum to address other common concerns with regard to economic development in Erie County, a Leadership Council of the IDAs will be established. Each IDA will designate one or more representatives to participate in the meetings of such Leadership Council, which are contemplated to occur on a quarterly basis. The Leadership Council will, through the consensus of its members, consider and resolve any concerns raised by an IDA with regard to the interpretation of the Uniform Policy, and will coordinate other joint activities of the IDAs to promote a countywide program of economic development.*

Proposed policies should be discussed by the IDA Leadership Council prior to adoption by any IDA Board of Directors. This forum worked well in the past for developing common practices, policies and procedures and could once again if reconstituted.

David Mingoia
Deputy Director
Amherst Industrial Development Agency
4287 Main Street
Amherst, New York 14226
716-688-9000

CITY OF BUFFALO

BYRON W. BROWN
MAYOR

January 11, 2016

Mr. Richard Lipsitz
Chair, ECIDA Policy Committee
ECIDA
95 Perry Street, Ste. 403
Buffalo, New York 14203

Dear Mr. Lipsitz:

Thank you for giving the City of Buffalo the opportunity to make recommendations for the 2016 Work Plan.

The City of Buffalo has seen a tremendous amount of development in the last few years, but there is still much to do. Recognition of the importance and protection of universal County-wide IDA policies should be a priority of the ECIDA. The City is concerned with having disparate IDA policies and their impact on the ability of the City to attract investment.

The City wants to emphasize the importance of the EDICA Adaptive Reuse Policy and its critical role in keeping momentum going in the City of Buffalo. This policy has helped to make several development projects in the City possible and should be protected and strengthened.

We also ask that the ECIDA build upon the Seneca PILOT Increment Financing (PIF) example and expand the opportunity for PIFs that fund public improvements, even if projects include housing and retail.

The City of Buffalo recommends adoption of the One Region Forward Plan and alignment of its policies to regional planning efforts including the Western New York Regional Economic Development Council.

The City of Buffalo applauds ECIDA's commitment to support the creation and growth of small and minority-owned business (MBE) and women-owned businesses (WBE). We appreciate ECIDA's commitment to the Beverly Gray Business Exchange and look forward to working together on this important initiative.

In the interest of attracting investment to the City of Buffalo, we believe that these recommendations will help to maintain economic momentum and help to create a stronger Buffalo and Erie County.

Sincerely,

Byron W. Brown

Byron W. Brown
Mayor

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ERIE COUNTY LEGISLATURE

HON. EDWARD A. RATH, III
LEGISLATOR

January 14, 2016

Mr. Richard Lipsitz, Esq.
Chairman, ECIDA Policy Committee
ECIDA
95 Perry Street, Ste. 403
Buffalo, New York 14203

Dear Chairman Lipsitz:

Thank you for the opportunity to express my perspective relative to the 2016 Work Plan and the agenda before the Policy Committee. Although we have had some successes in the past year - I am dismayed that much of the policy work product was part of a political and social agenda. Instead, our ECIDA should narrow its focus to its intended authority and responsibility. In many ways the ECIDA's shifted role may have harmed long term private sector investment - having done so at a time when our region is in the midst of a potential long term economic upswing.

In order to return to the mission and purpose set out for the ECIDA there are a few items currently on the agenda that need to be removed. The 2016 Work Plan should not include the **Union Neutrality/Card Check, Living Wage, and the But-For-Test** policy discussions. These proposed regulations will stifle private sector investment - which is in direct conflict with the ECIDA's mission to "provide the resources that encourage investment, innovation and international trade."

These proposed regulations will stifle private sector investment, which is what the ECIDA should be working to cultivate.

Union Neutrality/Card Check should not be pursued by the ECIDA. There are numerous reasons this policy is ill-advised at this time. First, a card check requirement eliminates the private ballot when a work force is deciding to unionize. Ballot secrecy is a fundamental American right that cannot be taken away from workers. Second, card check processes can lead to intimidation of fellow employees - creating a negative and aggressive work environment.

Implementation of union neutrality often has the direct effect of muting a private investor's ability to establish their own priorities and determine how to work with his or her employees. This can be true even in the face of competition that does not have to play by the same rules. Instead the private company that has accepted the incentives with a card check carve

out must always take a pro-union stance for fear of being in violation of the union neutrality agreement. Private sector businesses and developers have indicated to me that this policy is a non-starter for their participation in future ECIDA inducements. The ECIDA does not need to further dissuade businesses and corporations from seeking its assistance and investing in our community.

Similarly, the **Living Wage** proposal will unnecessarily increase costs on local businesses. Organizations that are forced to comply with this proposed policy will ultimately seek other funding methods or be forced to hire fewer workers. Further, the Living Wage proposal is arguably duplicative when taking into account the Governor's recent wage hikes.

Our IDA does not need to waste discussion time on items that are currently being addressed at the State level. Anything that we do to enact Living Wage proposals could be seen as further imposing a social goal in an economic development agency. Again, local business leaders have indicated their fierce opposition to this proposed policy change.

It is in Erie County's best interest to put as many people back into the work force as possible. By forcing businesses seeking ECIDA funding to pay an elevated Living Wage - we are creating the unintended consequence of limiting the number of workers these businesses hire. It is the role of the Federal and State governments to enact wage laws not the ECIDA.

Finally, the **But-For-Test** should not be given consideration by the ECIDA. The notion of the "but for" test derives from Federal legislation that regulates the issuance of tax exempt bonds (federal income tax exemption for purchasers of the debt). IDA projects had to certify that "but for" tax exempt financing, a project was not economically feasible. This test is still in the federal statutes, mainly in the form of industrial revenue bonds. However, it is not in any state legislation regulating any benefits issued by IDAs, such as sales tax exemption, real property tax abatement, mortgage tax exemption, and so on. No other IDA has a "but for" test for the normal incentives that everyone offers - New York State's Empire State Development does not require a "but for" affidavit.

The incentives offered by our IDA are to make Erie County competitive with other regions within New York State, and with every other state in the nation. If we implement this But-For-Test, we damage our powerful inducement tool to encourage development throughout Erie County. The ECIDA is charged with guiding development across the county. If we only limit ECIDA incentives to situations where an investment would not otherwise be made - we risk our ability to shape and direct future investments in Erie County.

While I have expressed concern with a few items before the Policy Committee, there is one topic which I feel needs to be placed at the top of our agenda. This item is **Adaptive Reuse/Targeted Areas.**

Erie County has an excess inventory of existing buildings that would qualify for the adaptive reuse funding. In focusing on more adaptive re-use, the ECIDA helps to limit the amount of new infrastructure while focusing investment on "SMART" growth and strategic development of our cities, towns and villages. Encouraging the reinvestment in existing

properties is in keeping with the One Region Forward plan, which will also be useful in identifying areas that should be targeted for future investment and development.

Lastly, I am advocating the Policy Committee to reconsider the Pay Equity Policy that was implemented late in 2015. To begin, it's important to note that I am supportive of equal pay for equal work for both men and women. However, this policy far exceeds the ECIDA's role and mission. There are several reasons why the Policy Committee needs to reconsider its current Pay Equity Policy:

- The policy is redundant - because equal pay compliance is already a Federal and State requirement
- Enforcement of this new Pay Equity Policy is to be conducted by the Erie County Equal Employment Opportunity Commission (EEOC), which does not have the manpower nor expertise in this complex field of compliance for the ECIDA
- Erie County is the only county in the State of New York to enact such a policy - because it's not the role of an IDA
- The "random audits" conducted by EEOC are highly intrusive, time consuming and expensive for both the companies being investigated and Erie County
- The Erie County Legislature passed a resolution on November 19, 2015 calling for the repeal of the Pay Equity Policy

For these reasons we need to reconsider this new policy because it places our IDA at a significant competitive disadvantage relative to all other economic development agencies. In fact, I have had major developers and large businesses report to me that they will no longer seek ECIDA inducements in the City of Buffalo because of this far-reaching regulation.

Recently, we reconsidered the ECIDA inducement application for the School 56 property in the City of Buffalo. At the time Chairwoman McDuffie said the ECIDA had an obligation to re-consider the application because it was requested by an elected official. It is my hope and expectation that my request will be given that same consideration.

Our IDA's role is to provide the resources that encourage investment, innovation and international trade - not to further social goals and political ideologies.

I look forward an open and honest discussion about the direction the ECIDA will be pursuing in 2016. There is no question that we are experiencing a positive economic development upswing in Erie County and I will do everything I can to work with my fellow board members to fulfill the ECIDA's economic development mission.

Sincerely,

Edward A. Rath, III
Erie County Legislator, 6th District