

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

- DATE AND PLACE:** February 21, 2018, at the Erie County Industrial Development Agency, 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203
- PRESENT:** Rev. Mark E. Blue, James F. Doherty, Tyra Johnson, Hon. Brian J. Kulpa, Richard Lipsitz, Jr., David L. Lowrey, Brenda W. McDuffie, John J. Mudie, Hon. Glenn R. Nellis, Louis Panzica, Hon. Mark C. Poloncarz, Sister Denise Roche and Paul V. Vukelic
- EXCUSED:** Hon. Diane Benczkowski, Hon. Byron W. Brown, Hon. Patrick B. Burke, Hon. Joseph H. Emminger, Dottie Gallagher-Cohen, and Hon. Darius G. Pridgen
- OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Mollie Profic, Treasurer; Karen M. Fiala, Assistant Treasurer and Robert G. Murray, Secretary
- GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist

At 9:04 a.m., there being a quorum present, Ms. McDuffie called the meeting to order.

MINUTES

The minutes of the January 24, 2018 meeting of the members were presented. Mr. Nellis moved, and Mr. Blue seconded, to approve of the meeting minutes. Ms. McDuffie called for the vote and the minutes were unanimously approved.

At this point in time, Mr. Weathers informed members of the passing of Michael Bartlett, Hamburg Industrial Development Agency Executive Director. Rev. Blue then led members in prayer.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic presented the financial statements for January 2018 noting that the balance sheet shows that the Agency finished 2017 with total assets of \$33.8 million and net assets of \$21.7 million, reflecting a net loss of \$6.7 million for 2017, which includes the grant from the UDAG fund to the ILDC in the amount of \$6.5 million. The draft financial statements will be reviewed by the Finance & Audit Committee on March 12th and presented to the Agency for approval at its March 21st meeting. The Agency finished the month of January with total assets of approximately \$33.7 million and net assets of \$21.5 million. The income statement shows an operating loss of \$165,000 for January. Operating revenue of \$30,000 was under budget by about \$170,000. Ms. Profic commented that 2018 is the first year since 2013 that the Agency was not

beginning the year with a receipt of a \$400,000 annual payment from the Harbor Center project. Operating expenses were over budget by \$7,000 due to a lot of once a year expenses paid in January, for example, insurance premiums. After depreciation, there was a net loss of \$175,000 for the month. Ms. McDuffie directed that the report be received and filed.

2018 Tax Incentive Induced/Closed Schedule/Estimated Real Property Tax Impact. Ms. Fiala presented this report. Ms. McDuffie directed that the report be received and filed.

Policy Committee Update. Mr. Lipsitz noted the Policy Committee approved of the two projects that will be presented to the members at today's meeting. Ms. McDuffie directed that the report be received and filed.

INDUCEMENT RESOLUTIONS

Acquest Development Company, LLC, 85 River Rock Drive, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax abatement benefits project involving the build out of approximately 15,000 sq. ft. of an existing facility allowing the tenant of that facility, Tomric Systems, to increase its footprint within the facility to increase its operations.

As a condition precedent of receiving financial assistance and as a material term and condition established by the Agency in connection with its approval of the project, Mr. Cappellino noted that the Company must, subject to potential termination and/or modification and/or recapture of financial assistance, submit on at least an annual basis or as otherwise indicated below, through the conclusion of the later of two years following either the (i) construction completion date or (ii) termination date 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 \$1,338,750.00 (which represents the product of 85% multiplied by \$1,575,000.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment - that there are at least 25 existing full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE"); and
 - the number of current FTE employees in the then current year at the Facility; and
 - that the Company has maintained and created FTE employment at the Facility equal to 27 FTE employees representing the sum of the Baseline FTE plus 2, (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 within two years follow the construction completion date). In an effort to confirm and verify the Company's employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency's "Quarterly Employment Survey" form to be made available to the Company by the Agency.
- (iii) Local Labor Commitment - that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period.

- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency’s Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency’s Unpaid Real Property Tax Policy.

Mr. Poloncarz moved and Mr. Blue seconded to approve of the project as proposed. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF 85 RIVER ROCK ROAD, 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) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (iii) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE CONSTRUCTION, INSTALLATION, AND EQUIPPING OF THE PROJECT; AND (iv) AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

Group V Real Estate, Inc., 11342 Main Street, Newstead, New York. Ms. Fiala reviewed this proposed real property tax, sales tax and mortgage recording tax abatement benefits project involving the construction of an 8,000 sq. ft. expansion to an existing facility located in the Town of Newstead which facility will be leased to Athenex Pharma Solutions.

As a condition precedent of receiving financial assistance and as a material term and condition established by the Agency in connection with its approval of the project, Ms. Fiala noted that the Company must, subject to potential termination and/or modification and/or recapture of financial assistance, submit on at least an annual basis or as otherwise indicated below, through the conclusion of the termination of the PILOT 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 \$1,289,875.00 (which represents the product of 85% multiplied by \$1,517,500.00, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 55 existing full time equivalent (“FTE”) employees located at, or to be located at, the Facility as stated in the Company’s application for Financial Assistance (the “Baseline FTE”); and
 - the number of current FTE employees in the then current year at the Facility; and
 - that the Company has maintained and created FTE employment at the Facility equal to 76 FTE employees [representing the sum of the Baseline FTE plus 21, the product of 85% multiplied by 25 (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 a quarterly basis, said information to be provided on the Agency's "Quarterly Employment Survey" form to be made available to the Company by the Agency.

- (iii) Local Labor Commitment – that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency's Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency's Unpaid Real Property Tax Policy.

Mr. Poloncarz queried as to when construction may begin. Ms. Fiala noted that construction is set to begin in the spring of 2018 and should be completed within six months thereafter.

Mr. Blue moved and Mr. Vukelic seconded to approve of the project as proposed. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF GROUP V REAL ESTATE, INC., AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iv) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (v) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT; AND (C) A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

MANAGEMENT TEAM REPORTS

Mr. Weathers informed members that the Agency will be speaking at a small business seminar targeted for minority and women owned business enterprises this coming week. Mr.

Weathers also reminded members to submit their surveys as required under the Public Authorities Law with respect to Board performance. Mr. Weathers also informed members that RDC and Agency staff have recently reviewed the standard RDC loan application form and have made a few amendments/revisions thereto.

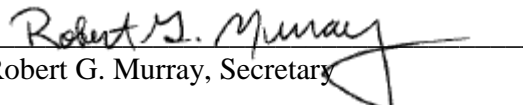
Mr. Weathers next informed members that the Harris Beach professional services agreement for providing legal services to the Agency is set to expire on May 1, 2018. Mr. Weathers then asked for a motion and second to resolve to extend the Harris Beach professional services agreement contract to May 1, 2019 and during this time period Agency staff will prepare and release an RFP for legal services. Sister Denise moved and Mr. Lowrey seconded to approve of the extension request. Ms. McDuffie called for the vote and the motion to extend the Harris Beach professional services agreement through May 1, 2019 was unanimously approved.

Mr. Weathers then informed members that Agency staff is in the process of revising its professional services procurement policy establishing a standard minimum three year term with an option for two, one-year extensions for satisfactory performance for all professional services including legal, banking, and insurance, said amended policy to be presented to the members at next month's board meeting for ultimate approval.

Mr. Weathers then asked for the Agency to enter into Executive Session to discuss a certain legal matter. Mr. Murray advised members that the Agency can enter Executive Session for the purpose of discussing the financial history of a particular person or corporation and as such, the request to enter into Executive Session is to permit the Agency to discuss the financial history of a particular person or corporation. Mr. Mudie moved and Mr. Nellis seconded to enter into Executive Session for the purposes as described above. The motion was then unanimously approved. At 9:22 a.m., the Agency entered into Executive Session. Upon motion made by Mr. Kulpa and seconded by Mr. Vukelic, and unanimously approved, the Agency terminated Executive Session at 9:43 a.m.

There being no further business to discuss, Ms. McDuffie adjourned the meeting at 9:44 a.m.

Dated: February 21, 2018


Robert G. Murray, Secretary