

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

DATE AND PLACE: February 27, 2019, at the Erie County Industrial Development Agency (the “ECIDA” or “Agency”), 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203

PRESENT: Hon. Diane Benczkowski, Rev. Mark E. Blue, Hon. Patrick B. Burke, Hon. Joseph H. Emminger, Dottie Gallagher, Hon. Brian J. Kulpa, Brenda W. McDuffie, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen, Sister Denise Roche, Kenneth A. Schoetz, Charles F. Specht and Art Wingerter

EXCUSED: Hon. Bryon W. Brown, James F. Doherty, Tyra Johnson, Richard Lipsitz, Jr. and John J. Mudie

OTHERS PRESENT: Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Karen M. Fiala, Assistant Treasurer; Mollie Profic, Chief Financial Officer; Gerald Manhard, Chief Lending Officer; and Robert G. Murray, Secretary

GUESTS: Christopher Andreucci, Esq. of Harris Beach PLLC as Bond Counsel; Michael Szukala, Chair, Audit & Finance Committee; Andrew Federick, Erie County Senior Economic Development Specialist; Maria Whyte, Deputy County Executive; Dennis Penman on behalf of Related Companies; Deep Katdare on behalf of Related Companies; Danielle Shainbrown on behalf of McGuire Development; Brian Askey on behalf of McGuire Development; Vince Ricotta on behalf of Concept Construction

There being a quorum present at 12:24 p.m., the meeting was called to order by Ms. McDuffie.

MINUTES

The minutes of the January 23, 2019 meeting of the members were presented. Mr. Kulpa moved and Mr. Nellis seconded, to approve of the minutes. Ms. McDuffie called for the vote, and the minutes were then unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic presented the January 2019 financial report, noting that the balance sheet shows that the Agency finished the month with total assets of \$29.5 million and net assets of \$21.9 million. The monthly income statement shows operating income of \$72,000 which was under budget by about \$155,000. Operating expenses were over budget by approximately \$2,000, mainly due to many annual costs being paid in January. After depreciation, there was a net loss of \$194,000 for the month. Ms. McDuffie directed that the report be received and filed.

Finance and Audit Committee Update. Ms. Profic provided members with the Finance and Audit Committee update. The Committee reviewed the Related Affordable LLC ECIDA bond application that members will be asked to consider later on during this meeting, and noted that the committee voted to recommend approval of same to the members of the Agency. The Committee also reviewed a required communication letter from Freed Maxick, as an informational item. Ms. McDuffie directed that the report be received and filed.

Governance Committee Update. Ms. Profic provided members with an update on the Governance Committee meeting held on January 23, 2019. The only agenda item was the Legal RFP recommendations. The Committee discussed the process undertaken and the staff committee's recommendations. The Committee voted to recommend the slate of attorneys as presented by the staff selection committee to the members of the Agency for approval today. Ms. McDuffie directed that the report be received and filed.

Legal RFP. At this point in time, Mr. Murray, being the Agency's general counsel, offered to leave the meeting but Ms. McDuffie advised, and confirmed same with members present, that his presence would be acceptable. Ms. Profic noted that the Governance Committee approved staff recommendations, and then provided members with the staff recommendations.

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

2019 Tax Incentive Induced/Closing Schedule/Estimated Real Property Tax Impact. Ms. Fiala presented this report. Ms. McDuffie directed that the report be received and filed.

Affinity Sutton Place, L.P.-Early Redemption of Bond. Mr. Cappellino noted that in 2003, the ECIDA issued its Multifamily Housing Revenue Bonds in the amount of \$9,995,000 for a project which consisted of the reconstruction and rehabilitation of 246 affordable housing rental units located at 113 Travers Boulevard in the Town of Amherst. Affinity Sutton Place

L.P. (the "Company") desires to sell the facility, which would allow the Company to prepay and redeem the Bonds. The sale of the Facility, and subsequent redemption of the Bonds, requires the ECIDA to terminate the documents executed in connection with the issuance of the Bonds and those documents providing financial assistance for the Project by the ECIDA. Upon selling the Project Facility and redeeming the Bonds, neither the Company nor the ECIDA will have a property interest in the Project Facility. The purchaser of the facility, Sutton Place of Amherst LLC (the "Purchaser") desires to maintain the facility as an affordable housing complex. The Declaration of Negative Covenants (the "Regulatory Agreement") is the controlling document for the low-income affordability of the facility, which will be assigned to the Purchaser from the Company via the Assumption and Assignment of Regulatory Document (the "Assignment"). Pursuant to Section 8 of the Regulatory Agreement, the ECIDA must provide its consent for the Assignment.

Mr. Specht moved and Mr. Wingerter seconded, to approve of the assignment as herein described. Ms. McDuffie called for the vote, and following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING, WITH REGARD TO THE 2003 AFFINITY SUTTON PLACE L.P. MULTIFAMILY HOUSING PROJECT, THE NEGOTIATION, EXECUTION AND DELIVERY OF (A) THE TERMINATION OF THE ISSUER DOCUMENTS (AS DEFINED BELOW), AND (B) CONSENT TO AN ASSIGNMENT AND ASSUMPTION OF THE DECLARATION OF RESTRICTIVE COVENANTS, TOGETHER WITH RELATED DOCUMENTS.

Clover Community Fries, LLC-Assignment of Equity Interest. Mr. Cappellino noted that in 2007 Affordable Senior Housing Opportunities of New York, Inc., as a related company of Clover Management ("Clover"), undertook the demolition of the former Brighton Elementary School and the construction of a 153 unit apartment building for senior citizens in the Town of Tonawanda. Clover Communities Fries, LLC ("LLC") is requesting IDA's consent to a partial transfer and restructuring of the equity interests of the LLC whereby the equity interests currently owned by various limited partners will now be owned by Welltower, Inc. The net result is that there will be a change of equity ownership of approximately 80% to 90%.

Under the terms of the existing leaseback agreement between the ECIDA and LLC, the LLC must obtain the ECIDA's consent/approval with respect to the sale of equity, in order to allow the project to continue to obtain PILOT benefits, under such terms and conditions that the ECIDA may reasonably require. Financial assistance approvals require adherence to certain material terms and conditions that the ECIDA applies on a project by project basis. As a condition to obtaining the ECIDA's approval for the project to continue receiving PILOT benefits via the ECIDA's consent to the sale of the equity interest in the LLC, the ECIDA has requested the company comply with the terms and conditions below through the termination of the PILOT Agreement benefit period:

<i>Condition</i>	<i>Term</i>	<i>Recapture Provision</i>
Employment	Through end of lease term	Maintain Base: 2
Unpaid Taxes	Through end of lease term	Adherence to policy
Pay Equity	Through end of lease term	Adherence to policy
Recapture Period	Through 12/31/2021 (end of lease term)	Real Property Taxes

Ms. McDuffie confirmed that the original project, as approved, contained no material terms and conditions that could require recapture of financial assistance, such that the project, as approved with a requirement that the aforementioned material terms and conditions be adhered to subject to recapture of financial assistance, places the Agency and the community in a much stronger position.

Sister Denise moved and Mr. Emminger seconded, to approve of the sale of equity interest in the LLC as herein described. Ms. McDuffie called for the vote, and following resolution was unanimously approved:

RESOLUTION OF TH ERIE COUNTY INDUSTRIAL DEVELOPMENT
AGENCY APPROVING THE PARTIAL TRANSFER AND
RESTRUCTURING OF THE EQUITY INTERESTS OF CLOVER
COMMUNITY FRIES, LLC

Policy Committee Update. Ms. McDuffie gave a report noting that the Policy Committee is recommending approval of both projects to be presented to the ECIDA. Ms. McDuffie directed that the report be received and filed.

INDUCEMENT RESOLUTIONS

McGuire Development Company, LLC/CAO, 600 Northampton Street, Buffalo, New York. Ms. Fiala reviewed this proposed sales tax, mortgage recording tax exemption and real property tax abatement project involving the development of a 38,500 sq. ft. facility on the site of the former Deaconess Hospital parking lot to house a relocated Head Start Academy (3-5 years old) together with additional facilities for Early Head Start (0-2 years old) as well as a community health clinic to be operated by Community Health Center of Greater Buffalo. CAO will be the master tenant under a long term lease with the applicant.

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, modification and/or recapture of financial assistance, submit on at least an annual basis or as otherwise indicated below, through termination of the PILOT Agreement, 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 \$8,004,395 (which

represents the product of 85% multiplied by \$9,416,936, being the total project cost as stated in the Company's application for Financial Assistance).

- (ii) Employment Commitment – that there are at least 37 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 39 FTE employees, representing the sum of 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). In an effort to confirm and verify the Company's employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on quarterly basis, said information to be provided on the Agency's “Quarterly Employment Survey” form to be made available to the Company by the Agency.
- (iii) Local Labor Commitment – that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency's Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency's Unpaid Real Property Tax Policy.

Ms. Fiala then introduced Danielle Shainbrown and David Askey who spoke on behalf of McGuire Development and the project.

Mr. Pridgen queried as to the timeline for the project. Ms. Shainbrown stated they hope to have the new facility opened by the fall of 2019.

Mr. Pridgen moved and Mr. Nellis seconded to approve 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 MCGUIRE DEVELOPMENT COMPANY, LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE “COMPANY”) IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING,

AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iv) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (v) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (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

Related Affordable, LLC/Marina Vista Apartments, 32 Hertel Avenue (aka 10 and 12 Hertel), Buffalo, New York. Ms. Fiala reviewed this proposed sales tax and mortgage recording tax exemption project involving the acquisition and renovation of the complex in order to preserve and improve an important affordable housing resource in the City of Buffalo. The property consists of an approximately 4.5 acre lot with two 13-story towers containing 97 one-bedroom units, 97 two-bedroom units and a non-revenue producing employee unit as well as a management office, community room, two laundry rooms, and outdoor barbecue area. The applicant proposes to invest approximately \$36,000 per unit in direct hard costs (approximately \$45,000 in total construction costs) to complete a comprehensive rehab that will improve the property functionality and aesthetically. In addition to physical upgrades, the proposed owner is expected to enter into regulatory agreements to obtain low income housing tax credits and tax exempt bonds to ensure that 100% of the units remain affordable for residents with income at or below 60% AMI for at least another 30 years.

As a condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company covenants and agrees and understands that it must, subject to potential modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below through the conclusion of the later of two (2) years following either (i) the construction completion date, or (ii) the termination of the Agent Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment – the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$20,059,671 (which represents the product of 85% multiplied by \$23,599,613, being the total project cost as stated in the Company’s application for Financial Assistance).

- (ii) Employment Commitment – that there are at least five (5) 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 FTE employment at the Facility equal to five (5) FTE employees.

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 confirmed he supports the project as it is supporting affordable housing and expressed support for the project.

Ms. Gallagher commented that a bill is proposed in the New York State Senate and Assembly that will require that recipients of IDA financial assistance pay prevailing wages to construction workers, and she then asked the applicant how a requirement to pay prevailing wages would affect the project.

Mr. Deep Katdare then responded on behalf of the applicant and stated that a prevailing wage requirement would increase costs by about 25% or otherwise add more than \$1,000,000 to the cost of the project.

Ms. Gallagher then asked, if prevailing wages were actually required to be paid, whether the company would still undertake the project. Mr. Katdare responded that the project would not be feasible.

Ms. Gallagher then stated her concerns that a prevailing wage requirement will have on projects and on the Agency itself, and suggested that the Agency take actions to get out ahead of this.

Mr. Wingerter then expressed his concerns related to the impacts that a prevailing wage requirement may have in that such new project costs may yield projects not-doable, and expressed concern that the Agency's deal flow will be adversely affected.

Mr. Poloncarz noted that in his most recent experience related to the ECC STEM Classroom Facility construction project, where prevailing wages were paid, that the project came in under budget and stated that now is not the right time to discuss prevailing wage impacts.

Mr. Kulpa asked if Agency staff could make a presentation to board members describing the proposed prevailing wage bill and anticipated impacts of such a bill. Mr. Weathers responded in the affirmative.

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

RESOLUTION (A) AUTHORIZING THE ISSUANCE, EXECUTION, SALE AND DELIVERY OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY TAX-EXEMPT AND/OR TAXABLE MULTIFAMILY HOUSING REVENUE BONDS (MARINA VISTA PRESERVATION, L.P. PROJECT), IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$13,300,000; (B) THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AND (C) MAKING A FINDING IN COMPLIANCE WITH THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT

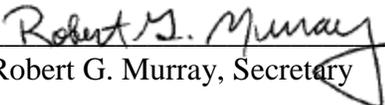
MANAGEMENT TEAM REPORTS

Mr. Weathers asked all Board members to return their annual performance surveys.

Mr. Weathers gave an update on the Net Zero facility.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 1:10 p.m.

Dated: February 27, 2019


Robert G. Murray, Secretary