

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

- MEETING:** June 6, 2019, at Erie County Industrial Development Agency, 95 Perry Street, 5th Floor Conference Room, Buffalo, New York
- PRESENT:** Hon. April Baskin, Rev. Mark E. Blue, Hon. Byron W. Brown, Hon. William J. Krebs, Richard Lipsitz, Jr., Brenda W. McDuffie, John J. Mudie, Hon. Glenn R. Nellis, Laura Smith, David J. State, Lavon Stephens and Maria Whyte
- ABSENT:** Hon. Johanna Coleman, Mr. Richard Cummings and Colleen DiPirro
- OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President, and Karen M. Fiala, Secretary
- GUESTS:** Robert G. Murray, General Counsel; Andrew Federick, Erie County Senior Economic Development Specialist; Denise Juron-Borgese on behalf of 201 Michigan LLC, Mr. Tom Fox on behalf of 270 Michigan LLC, Mr. Eran Epstein on behalf of Fedder Lofts; Chuck Scothon and Greg Wilber on behalf of Fisher-Price

There being a quorum present at 9:03 a.m., the meeting of the Policy Committee was called to order by Mr. Lipsitz. Mr. Lipsitz then introduced Mr. Lavon Stephens to the committee as its newest member.

MINUTES

The minutes of the March 7, 2019 Policy Committee meeting were presented. Upon motion made by Mr. State, and seconded by Mr. Blue, the aforementioned Policy Committee meeting minutes were unanimously approved.

PROJECT MATRIX

Mr. Cappellino reviewed the Agency's project matrix. Mr. Lipsitz directed that the report be received and filed.

PROJECT PRESENTATIONS

201 Ellicott, LLC and Ellicott Green Acres, LLC (d/b/a Braymiller Market), 201-203 Ellicott Street, Buffalo, New York. Mr. Cappellino presented this proposed sales tax, mortgage recording tax and real property tax abatement benefits project involving the construction of a 21,510 sq. ft. fresh food market. The retail portion of the grocery store will encompass 9,280 sq.

ft. and the wholesale side of the business will occupy 9,580 sq. ft. A back office will take up the remaining space. The project is located in a census tract that is considered highly distressed.

At this point in time, Ms. Smith joined the meeting.

Mr. Cappellino stated that in exchange for providing the sales and use tax, mortgage recording tax and real property tax abatement benefits, the approval of this project will be conditioned upon adherence to certain material terms and conditions with respect to the potential modification, recapture and/or termination 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 = \$6,901,900 85% = \$5,866,615
Employment	Coincides with 7-year PILOT	Create 85% of Projected Projected = 45 FT 85% = 38 Recapture Employment = 38
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Coincides with 7-year PILOT	Adherence to policy
Unpaid Tax	Coincides with 7-year PILOT	Adherence to policy
Recapture Period	Coincides with 7-year PILOT	Recapture of state and local sales tax, mortgage recording tax and real property taxes.

Mr. Lipsitz reminded Policy Committee members that the Policy Committee makes non-binding recommendations to the ECIDA board. Mr. Lipsitz confirmed that staff prepares project materials, a public hearing was then held on this project, the Policy Committee reviews the project as it will do today, and the full board of the ECIDA makes the ultimate determination on whether to grant financial assistance.

At this point in time, Ms. Baskin, Ms. Whyte and Ms. McDuffie joined the meeting.

Mr. Cappellino introduced Denise Juron-Borgese and Stewart Green who presented additional information on the project to the Policy Committee. It was noted that six of the seven census tracts within the City of Buffalo qualify as a food desert, and the applicant also stated its commitment to hiring 25% MWBE businesses for its workforce on the project, and to adhering to disabled veteran workforce commitments.

Mr. Brown spoke in favor of the project, noting the City has spent several years planning for this type of project and obtained significant amounts of public input to identify how to bring

a food market to downtown Buffalo. Mr. Brown noted the food in the grocery will be sourced locally, and that the project will support rural needs as well.

Ms. Whyte thanked the Mayor and the City for their efforts to bring locally sourced food to the downtown corridor. Ms. Whyte noted that the Erie County Executive will support the retail finding for the project because the project provides goods and services that are not available due to existence of the food desert and also because the project is located in a highly distressed area. Ms. Whyte also noted that the project is consistent with the County Executive’s “Initiatives for a Smart Economy 2.0” food policy initiative to get locally grown food onto the tables of all Erie County residents.

Ms. McDuffie spoke in favor of the project. Mr. State spoke in favor of the project.

Mr. Blue moved, and Mr. Brown seconded to approve of the project as proposed.

Mr. Lipsitz then noted that recent news reports on this project inaccurately described the ECIDA process for project review and consideration and confirmed that the ECIDA project review process is both rigorous and consistently applied.

Mr. Lipsitz called for the vote and the project was then unanimously approved.

270 Michigan, LLC, 270 Michigan Avenue, Buffalo, New York. Mr. Cappellino presented this proposed sales tax and mortgage recording tax benefits project involving the company’s adaptive reuse of an existing facility. The project for ECIDA consideration involves the renovation of 80,000 sq. ft. which will include office/back-office and warehouse space along with the addition of 6 market-rate apartments. Mr. Cappellino also confirmed that the project is located within a highly distressed area.

Mr. Cappellino stated that in exchange for providing the sales and use tax and mortgage recording tax benefits, the approval of this project will be conditioned upon adherence to certain material terms and conditions with respect to the potential modification, recapture and/or termination 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 = \$6,662,000 85% = \$5,662,700
Employment	Same as recapture period	Maintain Base: 1 Create 85% of Retained & Created = 35 FT & 1 PT 85% = 30 Recapture Employment = 30 FTE

Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Same as recapture period	Adherence to policy
Unpaid Tax	Same as recapture period	Adherence to policy
Recapture Period	2 years after project completion	Recapture of state and local sales tax and mortgage recording tax

Mr. Cappellino introduced Tom Fox who spoke to members about the project.

Mr. Brown queried about the mix of affordable and market rate apartment units. Mr. Fox stated the project will have 6 apartment units. Three units will be affordable and 3 will be market-rate at the rate of \$1,200-\$2,400/month.

Mr. Fox then commented that the company has committed to securing 25% MBE and 5% WBE participation.

Ms. McDuffie spoke in favor of the project and its adaptive reuse components and spoke in favor of ensuring employment is created within the vacant commercial space.

Ms. Whyte queried as to the parking deck component of the project. Mr. Fox stated that the proposed parking deck will be a one level deck but will be constructed above the existing surface lot to allow for 100 new spots, and without a deck, there will be a parking deficit making use of its new commercial space difficult. Ms. Whyte queried if the parking deck can be used by tenants. Mr. Fox stated that 95% of the parking deck would be available for tenants of the building.

Mr. Blue queried if ECIDA will monitor MWBE participation. Mr. Cappellino stated that monitoring is undertaken depending on the source of funding, noting that some sources require MWBE as only a goal, and commented that the City only requires goals. Mr. Blue asked if the ECIDA is able to monitor MWBE goals. Mr. Cappellino stated that monitoring MWBE participation is a Policy Committee question. Mr. Lipsitz then responded that he will add this issue to the Policy Committee agenda to be discussed at its next meeting.

Mr. Mudie inquired as to how much of the work will be undertaken by union workers. Mr. Fox stated that they the company has not yet issued bids for the project.

Mr. Krebs spoke in favor of the project.

Mr. State spoke in favor of the project.

Mr. Brown then moved and Ms. McDuffie seconded to approve of the project as proposed. Mr. Lipsitz called for the vote and the project was then unanimously approved.

Buffalo Material Handling, 125 Taylor Drive, Depew, New York. Mr. Cappellino presented this proposed sales tax, mortgage recording tax and real property tax abatement benefits project involving the company's construction of a 10,000 sq. ft. addition to the existing 12,000 sq. ft. space currently occupied by the applicant.

Mr. Cappellino stated that in exchange for providing the sales and use tax and mortgage recording tax and real property tax abatement benefits, the approval of this project will be conditioned upon adherence to certain material terms and conditions with respect to the potential modification, recapture and/or termination 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 = \$1,315,000 85% = \$1,117,750
Employment	Coincides with 7-year PILOT	Maintain Base: 30 Create 85% of Projected Projected = 3 85% = 2 Recapture Employment = 32
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Coincides with 7-year PILOT	Adherence to policy
Unpaid Tax	Coincides with 7-year PILOT	Adherence to policy
Recapture Period	Coincides with 7-year PILOT	Recapture of state and local sales tax, mortgage recording tax and real property taxes.

Ms. McDuffie spoke in favor of the project. Ms. McDuffie then moved, and Mr. Blue seconded, to approve of the project as proposed. Mr. Lipsitz called for the vote and the project was then unanimously approved.

Fedder Lofts, LLC, 57 & 71 Tonawanda Street, Buffalo, New York. Mr. Cappellino presented this proposed sales tax and mortgage recording tax benefits project involving the historic renovation and brownfield cleanup project of this 130,000 sq. ft. structure to provide a mixed use project consisting of 85 affordable living units and 20,000 sq. ft. devoted to a mini storage complex. The company is proposing offering rents at approximately 80% of the average median income. Sixty-five parking spaces are included in the reuse plan along with bike storage and parking.

Mr. Cappellino stated that in exchange for providing the sales and use tax and mortgage recording tax benefits, the approval of this project will be conditioned upon adherence to certain

material terms and conditions with respect to the potential modification, recapture and/or termination 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 = \$25,725,000 85% = \$21,866,250
Employment	Same as recapture period	Create 85% of Projected Projected = 2 85% = Recapture Employment = 2
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Same as recapture period	Adherence to policy
Unpaid Tax	Same as recapture period	Adherence to policy
Recapture Period	2 years after project completion	Recapture of state and local sales tax and mortgage recording tax

Mr. Epstein then spoke to the committee on behalf of the applicant.

Mr. Brown asked if goals of 25% MBE and 5% WBE can be established for the project, and received confirmation of same. Mr. Brown, Ms. Smith, and Ms. McDuffie then all spoke in favor of the project.

Mr. Brown then moved and Ms. McDuffie seconded to approve of the project as proposed. Mr. Lipsitz called for the vote and the project was then unanimously approved.

FISHER-PRICE PROJECT DISCUSSION

Mr. Cappellino reviewed the ECIDA's June, 2014 sales tax benefit approval for the Fisher Price \$568,000 equipment and building systems project, and confirmed the time period for sales tax benefit recapture and the material terms requiring Fisher Price to retain 750 employees. Mr. Cappellino noted Fisher Price was compliant with all employment requirements for 2014 through 2017, however, in 2018, Fisher Price had a four-quarter average of 667 employees, making it 11% below its employment requirements for 2018. Mr. Cappellino reviewed the three sales tax recapture options developed by staff, including option #1, being no recapture, option #2, being an 11% recapture amount related to the year of default, and option #3, being an outright 11% recapture related to total shortfall regardless of the fact that the default occurred only within a single year of the recapture monitoring period.

Mr. Scothon spoke on behalf of Fisher-Price, noting that in 2018, Toys-R-Us, being the biggest Fisher Price customer, went bankrupt, which lead to workforce reductions. However, Mr. Scothon noted that Fisher Price is considering relocating work done in another state to its East Aurora facility, and is also planning for a new multi-million dollar investment in its existing East Aurora facility as well.

Ms. Smith queried as to the anticipated job growth related to the proposed new investment. Mr. Scothon noted that there will be 25 new jobs coming here from other states, and noted that they have not confirmed any new jobs beyond that.

Mr. Stephens asked if baby boom generation retirements are affecting the company. Mr. Scothon responded in the affirmative and noted that Fisher Prices replaces those who retire.

Ms. Whyte commented and spoke in favor of recapture option 2. Ms. McDuffie spoke in favor of Option 2.

Mr. Brown asked Mr. Scothon if recapture option #2 would be acceptable. Mr. Scothon stated that he understands the ECIDA recapture policy and process and understands that Fisher Price must play by the ECIDA's rules and stated that option #2 would be acceptable as it does not put an undue burden on the company. Mr. Brown noted that Fisher Price has been a good corporate citizen.

Ms. Whyte moved and Ms. McDuffie seconded to approve of recapture option #2. Mr. Lipsitz called for the vote recapture option #2 was then unanimously approved for recommendation to members of the Agency.

There being no further business to discuss, Mr. Lipsitz adjourned the meeting at 10:26 a.m.

Dated: June 6, 2019



Karen M. Fiala, Secretary