

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

- MEETING:** July 11, 2019, at Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor Conference Room, Buffalo, New York
- PRESENT:** Rev. Mark E. Blue, Mr. Richard Cummings, Colleen DiPirro, Hon. William J. Krebs, Richard Lipsitz, Jr., Hon. Glenn R. Nellis, Laura Smith, David J. State and Lavon Stephens
- EXCUSED:** Brenda W. McDuffie<sup>1</sup>
- ABSENT:** Hon. April Baskin, Hon. Byron W. Brown, Hon. Johanna Coleman, John J. Mudie and Maria Whyte
- OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Mollie Profic, Chief Financial Officer; Atiqah Abidi, Assistant Treasurer; Dawn Boudreau, Compliance Officer; and Karen M. Fiala, Secretary,
- GUESTS:** Pietra G. Zaffram, General Counsel; Andrew Federick, Erie County Senior Economic Development Specialist; Kellena Kane on behalf of Uniland Development; Jeff Fierle on behalf of Derby Warehousing; Greg Wilber on behalf of Fisher-Price; Ted Kuzniarek on behalf of Upstate Pharmacy

There being a quorum present at 9:00 a.m., the meeting of the Policy Committee was called to order by Mr. Lipsitz.

**MINUTES**

The minutes of the June 6, 2019 Policy Committee meeting were presented. Upon motion made by Mr. Nellis, and seconded by Mr. Stephens, 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.

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<sup>1</sup> Ms. McDuffie participated via telephone conference call; however, she did not count for quorum purposes and is not considered present or eligible for purposes of voting on any action items.

**PROJECT PRESENTATIONS**

Buffalo High Technology Centre, Inc., 505 Ellicott Street, Buffalo, New York. Mr. Cappellino presented this proposed sales tax, mortgage recording tax and real property tax abatement benefits project involving the adaptive reuse of the former Frey building. The proposed project involves the adaptive reuse of a 20,000 sq. ft. facility by renovating the interior and exterior of the building and adding a mezzanine component which will increase the total square footage of the building to 35,000 sq. ft. The facility will include commercial and residential space. There is a retail determination with regard to 1,326 sq. ft. of retail space for a possible café. Erie County needs to confirm such determination. The project will also contain at least one 880 sq. ft. apartment.

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 = \$7,877,447 85% = \$6,695,829
Employment	Coincides with 7-year PILOT	Create 85% of Projected Projected = 4 FTE 85% = Recapture Employment = 3
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. Cappellino introduced Ms. Kane with Uniland Development who spoke to members about the project. Ms. Kane presented an overview of how the proposed project meets the Agency’s eligibility components for adaptive reuse. She noted that the project will serve as a connector between the medical campus and the Central Business District. The building is formerly owned by Frey the Wheelman and the project will entail a mixed-use facility with two residential units, a deli, office and flexible work space to allow for a co-working environment. There are similar spaces in the public sector but the company sees a need for private development of these types of office spaces. The project will take the existing building from 25,000 sq. ft. to 35,000 sq. ft. Financial obstacles facing the proposed development include: (i) high material and labor costs due to the restructuring of the entire front façade. The project will

offer turnkey office space and will be ISUD certified. Benefits for Buffalo, according to Ms. Kane, will include addition of flexible office space, and recruitment, retention and innovation opportunities for those who co-locate in the space. There will be two on-site staff people in the facility that will service the customers. There will be no leases involved; rather, Uniland will utilize “use” agreements for access to the space.

Ms. DiPirro commented that the project resonates with her, in that the adaptive reuse of such a building could be a prototype for other smaller projects to affect systemic change. She noted that in Amherst there are millennials who want to use office space temporarily and do not necessarily have the ability to lease a large office space. She noted there is a general lack of space for promoting entrepreneurial spirit and that this project will fit that demographic.

Ms. Smith concurred with Ms. DiPirro’s comments. She stated that there is a ripple effect for small businesses, and development of this project will start to put a commercial base in the area. Ms. Smith also noted there is a connection to the Beverly Gray facility that is graduating students directly across the street.

Ms. Kane noted that many incubators are currently running out of space, therefore this project would act like an accelerator.

Upon motion by Mr. Blue and seconded by Ms. DiPirro, a motion was made to approve of the project as proposed. Mr. Lipsitz called for the vote and the project was then unanimously approved.

Derby Warehousing, LLC/KPM Exceptional, 1393 Wisconsin Road, Derby, New York. Mr. Cappellino presented this proposed sales tax and real property tax abatement benefits project involving the expansion of the existing warehousing and distribution facility by constructing a 27,700 sq. ft. addition. Mr. Cappellino noted that this is a 1.3 million dollar project. There is currently an existing 28,000 sq. ft. building occupied by KPM and the expansion will represent a doubling of the company’s footprint in the Town of Evans. KPM is based in New Jersey. The Derby facility, compared to the possibility of expansion in New Jersey, offers an experienced workforce, close proximity to suppliers, less traffic congestion and proximity to Canada for planned future territory expansion.

Mr. Cappellino stated that in exchange for providing the sales and use 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 = \$1,332,000 85% = \$1,132,200
Employment	Coincides with 7-year PILOT	Maintain Base: 6 Create 85% of Projected Projected: 1 85% = 1 Recapture Employment = 7
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 and real property tax

Mr. Cappellino introduced Mr. Fierle from Derby Warehousing who presented further information to the members on the project. Mr. Fierle noted that KPM is a wholesale distributor with its primary location in New Jersey. They sell equipment to dealers from Maine to Virginia. The business has grown tremendously. Specifically, the 100,000 sq. ft. facility they built in New Jersey three years ago is at capacity. Mr. Fierle was approached about expanding the Derby facility. The Town of Evans approved the proposed 27,000 sq. ft. addition the night prior to Policy Committee meeting. Mr. Fierle noted that if the building is not constructed in Derby it will be built in Landing, New Jersey.

Ms. DiPirro noted that she likes the size of the project and noted that the proposed expansion is in an area of the region that we do not typically see job creation in. Ms. Smith noted that the project has potential to expand warehousing distribution. Mr. Fierle noted that his company's industry has peaks and valleys and they cannot lay people off. Thus, in order to maintain his workforce, they started another division which focuses on logistics and shipping on behalf of other businesses (3PL).

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

Fisher Price, Inc., 636 Girard Avenue, East Aurora, New York. Mr. Cappellino presented this proposed sales tax benefits project involving Fisher Price's renovation and updating of the Team Center building's first floor, which includes Play Lab space, into a Center for Early Childhood Development Research. The project will also involve renovation of office and meeting spaces.

Mr. Cappellino introduced Mr. Wilber from Fisher Price who presented further information on the proposed project. Mr. Wilber noted that Fisher Price's parent company, Mattel, made a decision to relocate its Early Childhood and Infant lines to East Aurora; therefore they need to upgrade the facility. Mr. Wilber then presented renderings of the proposed upgrades. Mr. Wilber noted that there will be pantry areas for employee collaboration and a new play lab constructed.

Mr. Nellis queried if this will be the central location for early childhood research and development for all of Mattel. Mr. Wilber responded in the affirmative, noting that development will take place for infants and pre-school toy development such as Thomas the Train Engine line.

Ms. Smith noted that research and development positions are high skilled jobs and the company needs to retain and attract the latest and greatest talent. Given this play lab is considered the research and development component for this particular industry's investment, it makes sense to upgrade the facility.

Ms. DiPirro asked what would happen if the project was not approved and Mr. Wilber noted that failure to approve of the project would jeopardize capital from the parent to undertake this project.

Mr. Krebs asked whether the company is in competition with other companies for design talent and Mr. Wilber responded in the affirmative, noting that many of the company's designers are approached by opportunities in many other areas of the country to work.

Mr. Cappellino noted that when Mattel first acquired Fisher-Price certain functions were moved away from East Aurora but Mattel has since moved certain lines back.

Ms. McDuffie noted that it is great to have the company back and commended their commitment to growing in Western New York.

Mr. Lipsitz then inquired what the overall employee count is and Mr. Wilber responded that there are 650 employees. Mr. Lipsitz then inquired as to how they get to work and Mr. Wilber noted that 90% commute by vehicle but some do avail themselves of bus lines. Also there is a shuttle service to transport inter-city individuals to East Aurora for seasonal work. Ms. McDuffie noted that this company should be role model because they provide transportation for city residents who would not otherwise have access to the facility.

Mr. Nellis then moved, and Mr. Cummings seconded, to approve of the project as proposed. Mr. Lipsitz called for the vote and the project was then unanimously approved.

## **RECAPTURE DISCUSSION**

Shevlin Land & Cattle Company ("Shevlin") and Upstate Pharmacy ("Upstate"). Mr. Cappellino discussed the proposed recapture of benefits for Shevlin and Upstate. Mr. Cappellino noted that the projects are inter-related. The ECIDA Board had approved a \$65,000 sales tax exemption for Shevlin and a PILOT equaling \$174,000 in real property tax savings. The facility that was constructed by Shevlin was then leased to related company Upstate. Upstate had a sales

tax exemption benefit of \$27,125 approved by the ECIDA Board. Upstate utilized \$4,769.68 in sales tax exemption benefits from June 13, 2016 to November 30, 2016.

Since Shevlin leases the facility to Upstate, Shevlin is responsible for Upstate's employment requirements. As part of the material terms, Upstate was required to retain 70 employees. In September 2018, the ECIDA Board approved a two-tiered retention goal of 95% depending on the number of employees. Upstate was therefore required to maintain at least 63 employees and create 8 new positions on or before November 30, 2018. However, Upstate did not create its required 8 new positions by said date.

Specifically, Upstate had a four quarter average of 63 employees and therefore was 11% below its employment requirements (63 out of 71). Mr. Cappellino then outlined three options for recapturing Shevlin's benefits period. Option 1 involved no recapture, Option 2 involved recapturing one year PILOT benefits based on Upstate's 11% employment shortfall and Option 3 requires recapturing one year PILOT benefits without considering the 11% employment shortfall. Mr. Cappellino noted there the company provided a memorandum outlining the reasons for their circumstances surrounding the employment shortfall.

Mr. Lipsitz then opened the floor to questions for the company. Ms. DiPirro noted that the company had a contract with Roswell Park to spin-off its specialty pharmacy and remarked that what Upstate essentially did was train Roswell's new employees during the spin-off. She asked whether the committee could count Roswell's job creation towards this project's employment goals, given that the employees trained by Upstate ultimately became Roswell versus Upstate employees. Mr. Kuzniarek confirmed that Upstate had trained the Roswell employees and confirmed that Roswell ultimately hired at least 4-5 people as a result of the pharmacy spin-off.

Mr. Cappellino noted that when the ECIDA reports job creation goals they do not count related jobs (such as the Roswell jobs created in this example) rather, they have looked at facilities of the same company in the past but not employment created by new companies.

Mr. Lipsitz noted that he is not in favor of counting the Roswell Park jobs created towards Upstate's employment requirements. He also noted that the Committee has looked at Option 2 of the recapture scenarios as a measured, reasonable approach to recapture, reminding the Committee that it has had similar scenarios in the past and the recommendation was Option 2.

Ms. Smith inquired whether the employment goals are linked and Mr. Cappellino responded that in this instance they are related.

Ms. McDuffie agreed that the recapture policy entails an obligation to fulfill job creation goals and consistency with other projects and what they have done in the past is important. She noted that she is in favor of Option 2 of the recapture scenarios.

Upon motion made by Mr. Blue and seconded by Mr. Stephens to approve Option 2, recapturing one year of Shevlin's PILOT benefits based on Upstate's 11% employment shortfall,

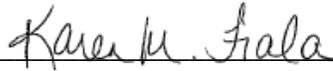
Mr. Lipsitz called for the vote and the Option 2 recapture requirements for Shevlin Land & Cattle Company were unanimously approved.

Mr. Cappellino then explained the recapture options for Upstate Pharmacy, noting that in March 2016 the Board approved the sales tax benefit to Upstate Pharmacy in the amount of \$27,125 to assist in connection with the equipping of a newly constructed 15,000 sq. ft. facility. Mr. Cappellino explained the Upstate Pharmacy project was directly linked to the Shevlin Land & Cattle Company project as discussed previously.

Upon motion made by Mr. Blue and seconded Mr. Nellis to approve Option 2, recapture of one year of sales tax benefits for Upstate Pharmacy based upon Upstate's 11 percent employment shortfall, Mr. Lipsitz called for the vote and the Option 2 recapture requirements for Upstate Pharmacy were unanimously approved.

There being no further business to discuss, Mr. Krebs moved, and Mr. Nellis seconded, to adjourn the meeting. Mr. Lipsitz adjourned the meeting at 10:11 a.m.

Dated: July 11, 2019

  
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Karen M. Fiala, Secretary