

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

DATE AND PLACE: March 30, 2016, at the Erie County Industrial Development Agency, 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203

PRESENT: Hon. Diane Benczkowski, Hon. Byron W. Brown, James F. Doherty, Dennis Elsenbeck, Hon. Joseph H. Emminger, Dottie Gallagher-Cohen, Richard Lipsitz, Jr., Frank B. Messiah, Hon. Glenn R. Nellis, Dr. Carol Nowak, Hon. Edward A. Rath, III, David J. State and Paul V. Vukelic

EXCUSED: Brenda W. McDuffie, Chris Johnston, John J. Mudie, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen and Hon. Barry A. Weinstein

OTHERS PRESENT: Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Andrew Schoepich, Treasurer; Karen M. Fiala, Assistant Treasurer; Mollie Profic, Assistant Treasurer; Dawn Boudreau, Compliance Officer; and Robert G. Murray, Secretary

GUESTS: Ted Kuzniarek of Upstate Pharmacy

There being a quorum present at 11:05 a.m., the meeting of the members of the Erie County Industrial Development Agency was called to order by Mr. Lipsitz, acting in place of the Chair, Ms. McDuffie, who was absent from the meeting.

At this point in time, Mr. Lipsitz welcomed Mr. Vukelic as the newest member of the Agency.

MINUTES

The minutes of the February 24, 2016 Meeting of the Members were presented. Upon motion made by Mr. Nellis, and seconded by Mr. Elsenbeck, the minutes were unanimously approved.

At this point in time, Mr. Brown left the meeting.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Legal RFP. Mr. Weathers introduced and reviewed the Legal Request for Proposals reminding members of the third party law firm opinion he had received as to whether a board member that receives a campaign contribution from one of the responding law firms has a conflict of interest prohibiting that member from voting. Mr. Weathers stated that he will not ask Mr. Murray to step out of the room because this is a public meeting and because Mr. Murray will only be taking minutes in his secretarial capacity and not otherwise participating in the meeting.

Mr. Weathers then informed members that the Agency did contact the New York State Joint Commission on Public Ethics, who stated it did not have jurisdiction over this issue, but who did confirm that the Agency could vote, one at a time, each attorney position individually, as opposed to approving the entire slate in a single vote, to minimize the effect of a conflict of interest that one member may have with respect to one law firm, but not another law firm.

Mr. Weathers then stated that, based on a request of some members, the various counsel positions engagement period will be changed from the initial, up to 7 year period, to a period of time of up to 2 years.

Mr. Weathers 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:

1. Retention of Harris Beach as general counsel and tax-exempt bond counsel. Ms. Gallagher-Cohen moved and Mr. Elsenbeck seconded to authorize the retention of Harris Beach as general counsel and tax-exempt bond counsel. Mr. Emminger stated he would abstain from the vote. Mr. Weathers called for the vote and the motion was approved by a vote of 10 in favor, no vote against, and with one abstention.
2. Loan Counsel, Barclay Damon, and tax-exempt bond counsel-conflict counsel, Barclay Damon. Mr. Nellis moved and Mr. Mesiah seconded to retain Barclay Damon as loan counsel and tax-exempt bond counsel-conflict counsel. The motion was then passed by a vote of 11 in favor, with no abstentions.
3. General counsel-conflict counsel, Hodgson Russ. Mr. Rath moved and Mr. Mesiah seconded to retain Hodgson Russ as general counsel-conflict counsel. Ms. Gallagher-Cohen stated she would abstain from the vote. Mr. Weathers then called for the vote and the motion was approved by a vote of 10 in favor, with one abstention.
4. Loan counsel-conflict counsel, Harter Secrest and Emery. Mr. Doherty moved and Mr. Rath seconded to retain Harter Secrest & Emery as loan counsel-conflict counsel. The motion was approved by a vote of 11 in favor, with no abstentions.

Financial Report. Ms. Profic reviewed the February, 2016, financial reports noting that the balance sheet shows the IDA ended February with net assets of \$24,000,000 and also stated the monthly income statement shows positive variances in both total revenues and total expenses for the month, with a net income of approximately \$243,000 for the month. Ms. Profic noted that revenue is ahead of budget due to the receipt of two large administrative fees. Total expenses were below budget by \$45,000 due to lower than budgeted payroll expenses and professional service costs. On a year-to-date basis, the Agency has received revenues of approximately \$985,000 and has operating expenses of approximately \$434,000. Net income for the year is \$427,000.

There being no further questions or comments, Mr. Lipsitz directed that the report be received and filed.

Finance and Audit Committee Update. Ms. Profic reported on the most recent ECIDA, RDC and ILDC Finance and Audit Committee meeting whereat the committee reviewed the Lumsden & McCormick report including draft 2015 audited financial statements. In addition, Ms. Profic stated that the Committee approved the 2015 Public Authorities Report as required under the Public Authorities Law. Ms. Profic also mentioned that the Committee approved the Investment Guidelines, the 2015 Investment Report, the Finance and Audit Committee Charter, the Finance and Audit Committee Self-Evaluation, the Corporate Credit Card Policy, and also approved the amendatory resolution to change the named issuer of tax-exempt bonds from Pilgrim Village Associates II, LP to Pilgrim Village Associates III, LP.

At this point in time, Mr. Brown rejoined the meeting.

2015 Audited Financial Statements. Ms. Profic then reviewed the Agency's financial statements, and the Buffalo Brownfields Redevelopment Fund financial statements, for the period ending December 31, 2015 and the auditor's independent auditor's report as of December 31, 2015 noting that the ECIDA received an unmodified opinions from the auditing firm Lumsden & McCormick, indicating that the financial statements present fairly, in all material respects, the financial position of the ECIDA as of December 31, 2015 and 2014, and the changes in its financial position and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America. She also commented that no proposed audit adjustments were noted. Upon motion made by Mr. Rath and seconded by Mr. Emminger, the Agency's 2015 audited financial statements were unanimously approved.

2016 Tax Incentive Induced/Closing Schedule. Ms. Fiala presented this report. There being no comments, Mr. Lipsitz directed that the report be received and filed.

Governance Committee Update. Ms. Boudreau updated members on the most recent ECIDA, RDC and ILDC Governance Committee meeting whereat the Committee members reviewed the results of the ECIDA's 2015 Performance measures, the mission statement and 2016 performance measures, the 2015 PAAA annual report, the 2015 Board of Directors self-evaluation, the 2015 Governance Committee's self-evaluation, as well as the various policies, charters and guidelines that the Agency will be asked to approve later today. Ms. Boudreau

further reported that no company was in violation of the Agency's local labor policy during 2015 based upon the Agency's review and compliance monitoring of projects subject to the local labor policy.

There being no further questions or comments, Mr. Lipsitz directed that the report be received and filed.

Policy Committee Update. Mr. Lipsitz provided members with an update on the most recently completed Policy Committee meeting, noting that Mayor Geoff Szymanski and Paul Vukelic were recently appointed as new members to the Policy Committee. Mr. Lipsitz commented that the Policy Committee approved the Upstate Pharmacy project, which will be presented to the Board later today. Mr. Lipsitz also noted that the Committee reviewed the Framework for Regional Growth and One Region Forward plans and commented that Policy Committee members were asked to rank and/or suggest agenda item topics for consideration, and to help prioritize, policy agenda items.

Ms. Gallagher-Cohen expressed her opinion that it would be too early, at this point in time, to rank policy agenda priority items without framing the policies in a manner consistent with the approaches presented in the Framework for Regional Growth and the One Region Forward plan. Mr. Lipsitz confirmed that he was only asking Committee members to rank their policy agenda items which will be discussed at the next Policy Committee meeting in the context of the One Region Forward plan.

There being no further discussion, Mr. Lipsitz directed that the report be received and filed.

INDUCEMENT RESOLUTIONS

Upstate Pharmacy, Ltd., 1900 North America Drive, West Seneca, New York. Ms. Fiala reviewed this proposed sales tax exemption benefit only project involving the equipping of the facility that will be leased by Upstate Pharmacy for purposes of allowing the company to undertake its pharmaceutical services. Ms. Fiala noted this is part two of an overall project which was originally approved by the Agency involving the Shevlin Land & Cattle Company, which undertook construction of the facility where part two of this project is the equipping of the facility by Upstate Pharmacy to allow Upstate Pharmacy to occupy and operate within the facility itself.

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 recapture of state and local sales and use tax exemption benefits, submit on an annual basis or as otherwise indicated below, through the conclusion of the later of either two years following: (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 \$263,500.00 (which represents the product of 85% multiplied by \$310,000.00, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least seventy (70) 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 seventy-eight (78) FTE employees [representing the sum of seventy (70) Baseline FTE plus the product of 85% multiplied by ten (10) (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)].
- (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 Policy 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 also noted that the Company is working with the Workforce Investment Board to find qualified candidates for newly created positions. At this point in time, Ms. Fiala introduced Mr. Ted Kuzniarek as a representative of Upstate Pharmacy.

Mr. Mesiah then queried as to how the company finds qualified employees and insures retention of a diverse staff based on gender and ethnicity. Mr. Kuzniarek responded that the Company utilizes services provided by Erie County Community College for recommending people qualified for technical positions and utilizes the Workforce Investment Board to also find qualified candidates. The Company relies on newspaper announcements to find pharmacists. Mr. Mesiah then asked if Erie County Community College provides the Company with a cross section of eligible candidates. Mr. Kuzniarek responded in the affirmative.

Mr. Lipsitz queried as to pay ranges. Mr. Kuzniarek responded that its wages for technical positions range from \$11-\$18 per hour, its pharmacists wages range from \$55 to up to \$62 per hour, and delivery positions are paid a minimum range with reimbursement for mileage and gas.

There being no further discussion, Ms. Gallagher-Cohen moved and Mr. Vukelic seconded to approve of the project. Mr. Lipsitz called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF UPSTATE PHARMACY LTD., 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) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iii) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (iv) 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 ACQUISITION AND EQUIPPING OF THE PROJECT; AND (v) AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN AGENT AND FINANCIAL ASSISTANCE AGREEMENT AND RELATED DOCUMENTS

REVIEW AND ADOPTION OF POLICIES, REPORTS AND COMMITTEE CHARTERS

2016 Mission Statement and Performance Measures. Mr. Schoepich noted that the 2015 Mission Statement, Performance Measures and Results are contained in the Board meeting materials and were reviewed by the Governance Committee. Mr. Schoepich next reviewed the 2016 Mission Statement and Performance Measures and noted that, per Governance Committee input, performance metrics were added to each objective to allow the Agency to better measure its results. Mr. Schoepich commented that metrics were established based on a rolling 3 year average, which was used to set each such base line metric.

Mr. Brown asked who prepared the 2015 report and who measured the results. Mr. Schoepich responded that he prepared the report with assistance from other Agency staff and all work was done in-house.

Mr. Rath asked if the metric measurements will be done on an annual basis and also asked if staff could share their review on a more frequent basis with Agency members so that red flags could be seen prior to the conclusion of the annual monitoring period.

Mr. Rath moved and Mr. Mesiah seconded to approve of the 2016 Mission Statement and Performance Measures. Mr. Lipsitz called for the vote, and the 2016 Mission Statement and Performance Measures were unanimously approved.

2015 Public Authorities Law Annual Report. Ms. Boudreau reviewed the report, and Mr. Nellis moved and Mr. Vukelic seconded, to approve of the report. Mr. Lipsitz called for the vote and the 2015 Public Authorities Law Annual Report was unanimously approved.

2015 Investment Report. Ms. Profic reviewed the report, and then Mr. Rath queried as to the ability of the Agency to choose higher interest bearing accounts. Mr. Weathers responded that staff is looking at ways to stagger certificate of deposit holdings to try to increase the interest rate.

There being no further discussion, Mr. Rath moved and Mr. Mesiah seconded, to approve of the 2015 Investment Report. Mr. Lipsitz called for the vote and the 2015 Investment Report was unanimously approved.

Code of Ethics. Mr. Murray reviewed proposed changes to the ECIDA, RDC and ILDC Code of Ethics noting that changes were made to make the Code of Ethics more consistent with the New York State Authorities Budget Office model Conflict of Interest Policy. Mr. Murray commented that the recommendations of the New York State Authorities Budget Office, which are not already contained in the ECIDA's existing Code of Ethics, will be inserted and include requirements that members explain the circumstances that constitute a conflict of interest or the appearance of a conflict of interest, and that the policy contain a description of the penalties for failing to comply with the Conflict of Interest policy. Mr. Murray also noted that the proposed Code of Ethics clarifies that certain actions are not prohibited by the standards of conduct so long as such actions do not constitute a prohibitive conflict of interest pursuant to the General Municipal Law, clarifies the procedures for identifying and disclosing conflicts of interest, and clarifies the powers and duties of the Ethics officer.

There being no further discussion, Mr. Brown moved and Mr. Emminger seconded, to approve of the ECIDA Code of Ethics. Mr. Lipsitz called for the vote and the ECIDA Code of Ethics was unanimously approved.

Re-Adopt Policies and Charters. Ms. Boudreau noted that the following policies and charters have been reviewed by and are being recommended for approval by the Governance Committee and that no changes have been made to any of the policies and charters as presented today.

Mr. Brown questioned as to why the Agency's Professional Services Procurement Policy is not included within the policies being presented to the members today. Mr. Schoeplich responded that the Procurement Policy itself references the Professional Services Policy. Mr. Brown asked if the Agency could separately approve the Professional Services Procurement Policy. Mr. Lipsitz then suggested that the Agency review the Professional Services Procurement Policy at its next meeting. Mr. Brown then moved that the Agency approve the following:

1. Investment & Deposit Policy
2. Finance & Audit Committee Charter
3. Governance Committee Charter

4. Whistleblower Policy
5. Procurement Policy
6. Property Disposition Guidelines
7. Property Acquisition Policy
8. Defense & Indemnification Policy
9. Board Member Compensation, Reimbursement & Attendance Policy
10. Employee Compensation Program
11. Travel, Conferences, Meals & Entertainment Policy
12. Statement of Duties & Responsibilities of the Board of Directors
13. Statement of the Competencies & Personal Attributes Required of Board Members
14. Corporate Credit Card Policy

Mr. Nellis seconded the motion and the aforementioned policies and charters were thereafter unanimously approved.

SPECIAL PROJECTS

Mr. Weathers noted that the special projects presented today were presented and reviewed by the Agency at its February 24, 2016 meeting.

Mr. Brown noted he will abstain from participating in the Buffalo Niagara-Labor Market Assessment as well as the Beverly Gray Business Exchange Center votes.

Invest Buffalo Niagara-Labor Market Assessment. Mr. Weathers then reviewed the Invest Buffalo Niagara-Labor Market Assessment \$75,000 special project. Mr. Rath moved and Mr. Vukelic seconded to approve of the Buffalo Niagara-Labor Market Assessment project funding request.

Ms. Gallagher-Cohen, Mr. Brown, and Mr. Elsenbeck all stated they would abstain from the vote. Mr. Lipsitz called for the vote and 9 members voted in the affirmative, no members voted in the negative and three members abstained, and as such, the motion failed to pass as it did not obtain the required 10 affirmative votes.

Ms. Gallagher-Cohen commented that the 11:00 a.m. meeting time is onerous as it falls within the middle of the day and commented that this meeting time is responsible for the recent lack of quorum problems the Agency has been experiencing. Ms. Gallagher-Cohen requested that the Agency return to its normal 9:00 a.m. meeting time.

At this point in time, Ms. Benczkowski joined the meeting and Mr. Lipsitz then asked for a second vote on the Buffalo Niagara-Labor Market Assessment. Mr. Mesiah moved and Mr. Vukelic seconded to approve of the Buffalo Niagara-Labor Market Assessment project funding request and the motion passed by a vote of 10 in favor with three abstentions by Ms. Gallagher-Cohen, Mr. Brown and Mr. Elsenbeck, and no votes in the negative.

Invest Buffalo Niagara-Erie County Canadian Lead Generation. Mr. Weathers reviewed the Invest Buffalo Niagara-Erie County Canadian Lead Generation \$100,000 special project. Mr. Mesiah moved and Mr. Emminger seconded to approve of the project. Mr. Lipsitz called for a vote and the motion to authorize expenditures to support the Invest Buffalo Niagara-Erie County Canadian Lead Generation special project was approved by a vote of 10 in favor with 3 abstentions by Mr. Brown, Ms. Gallagher-Cohen and Mr. Elsenbeck.

Beverly Gray Business Exchange Center. Mr. Weathers reviewed the proposed \$250,000 expenditure related to the Beverly Gray Business Exchange Center. Mr. Lipsitz moved and Ms. Gallagher-Cohen seconded to approve of the project. Mr. Lipsitz called for the vote which was approved by a vote of 11 in favor, with one abstention by Mr. Brown.

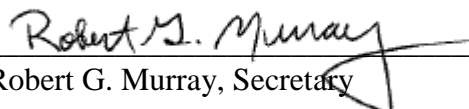
MANAGEMENT TEAM REPORTS

Mr. Weathers announced that Mr. Schoepich will be leaving the Agency for another opportunity elsewhere and thanked Mr. Schoepich for his outstanding service and commitment to the Agency and expressed his opinion that Andrew's departure will be a tough loss for the Agency but a great move for Mr. Schoepich and his family.

Ms. Gallagher-Cohen again commented that the 11 a.m. meeting time is resulting in low member turnout and requested that the Agency consider holding the meeting at an earlier time. Mr. Lipsitz stated he will send out a survey to Board members soliciting input with respect to a meeting start time.

There being no further business to discuss, upon motion made by Ms. Gallagher-Cohen and seconded by Mr. Brown, the meeting was adjourned at 12:03 p.m.

Dated: March 30, 2016



Robert G. Murray, Secretary