

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

**DATE AND PLACE:** May 25, 2016, at the Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor ESD Conference Room, Buffalo, New York 14203

**PRESENT:** James F. Doherty, Hon. Joseph H. Emminger, Richard Lipsitz, Jr., Brenda W. McDuffie, Frank B. Mesiah, Glenn R. Nellis, Hon. Mark C. Poloncarz, Hon. Edward A. Rath III, David J. State and Paul V. Vukelic

**EXCUSED:** Hon. Diane Benczkowski, Hon. Byron W. Brown, Dennis Elsenbeck, Dottie Gallagher-Cohen, Chris Johnston, John J. Mudie, Dr. Carol Nowak, Hon. Darius G. Pridgen and Hon. Barry A. Weinstein

**OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; Karen M. Fiala, Assistant Treasurer; Mollie Profic, Assistant Treasurer and Robert G. Murray, Secretary

**GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist

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 its Chair, Ms. McDuffie.

**MINUTES**

The minutes of the April 27, 2016 Meeting of the Members were presented. Upon motion made by Mr. Nellis, and seconded by Mr. Rath, the minutes were unanimously approved.

**REPORTS/ACTION ITEMS/INFORMATION ITEMS**

Financial Report. Ms. Profic presented the financial statements noting that the Agency as of April 30, 2016 has net assets of approximately \$28.7 million. The monthly income statement shows negative variances in both operating revenues and expenses for the month and an overall net loss of \$194,000 for the month of April. Operating revenue was below budget due to the timing of receipt of administrative fees. Operating expenses were above budget by about \$19,000, due to higher than budgeted general office expenses and professional services costs for the month. The year to date income statement presents total operating revenue of \$1,100,000 and total operating expenses of \$1,000,000 million. Year to date operating revenues are ahead of budget by \$306,000 and operating expenses are below budget by \$34,000. When taking into account special project grants, depreciation and non-recurring items, net income for the year is approximately \$5,000,000.

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

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

OSC Legislative Approvals. Mr. Weathers briefly reviewed the new statutory requirements that the Agency must put in place to comply with recent IDA reform legislation.

Mr. Murray then briefly reviewed the amended ECIDA Policy for Termination of Agency Benefits and Recapture of Agency Benefits Previously Granted and discussed the changes required to be made to comply with the new IDA statute. Mr. Murray then reviewed the requirement for the Agency to identify a labor market area from which companies seeking financial assistance must estimate the number of residents residing therein as a component part of the Agency's application and last, Mr. Murray reviewed the new required uniform criteria that the Agency must develop for the evaluation and selection of each category of projects for which financial assistance will be provided.

General discuss ensued. Mr. Poloncarz queried as to why retail is identified as a project type within the proposed uniform criteria for the evaluation and selection of projects given that the IDA is not authorized to undertake retail projects. Mr. Murray commented that the retail project category is governed by the retail prohibitions as expressed in Section 862 of the New York General Municipal Law but that the retail category provided within the uniform criteria was set forth to establish, as required by statute, evaluative criteria by which Agency must evaluate a retail project if it is otherwise eligible for financial assistance under the IDA statute.

Mr. Lipsitz then moved to adopt the criteria and noted that both the Policy Committee and the Board can review and amend at any time in the future. Ms. Gallagher-Cohen seconded the motion.

Mr. Poloncarz then requested to amend Mr. Lipsitz's motion to remove any reference to retail as contained within the uniform criteria as proposed. Mr. Poloncarz suggested that the retail criteria could be reconsidered at a future point in time.

Mr. Lipsitz then moved to remove his motion as originally proposed. Mr. Nellis seconded Mr. Lipsitz' withdrawal of his original motion. Ms. Gallagher-Cohen then proposed that the Agency approve of the uniform criteria with the removal of the retail project type. Mr. Lipsitz moved and Ms. Gallagher-Cohen seconded, to approve of the uniform criteria as proposed with the exclusion of the retail project category. Ms. McDuffie called for the vote, and the following resolution was then unanimously approved.

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY ADOPTING POLICIES AND PROCEDURES PURSUANT TO  
CHAPTER 563 OF THE LAWS OF 2015 IMPLEMENTING INDUSTRIAL  
DEVELOPMENT AGENCY ACCOUNTABILITY, EFFICIENCY,  
TRANSPARANCY AND OTHER RELATED COMPLIANCE MEASURES

Special Funding Project Approval – WNY Incubator Network. Ms. Profic reminded members that the ECIDA’s 2016 budget set aside \$750,000 to fund “external special projects.” To date, Ms. Profic noted that \$600,000 of these funds have been appropriated for projects by the Board. Ms. Profic then noted that the University at Buffalo Foundation, Inc. is the non-profit account holder for the WNY Incubator Network which is a collaborative effort of business incubators established to expand entrepreneurial services, help start-up companies, and grow wealth in our region. The request before us today is to fund the University at Buffalo Foundation, Inc. WNY Incubator Network in the amount of \$20,000 to provide funding as follows: (i) \$5,000 of general support for the incubator consortium, (ii) to provide \$5,000 of support for emerging student entrepreneurs, (iii) to provide \$5,000 for training programs to assist incubator companies in their initial meetings with outside investors, and (iv) to provide \$5,000 for consulting services to be provided to start-up companies. General discuss ensued.

Ms. Gallagher-Cohen moved and Mr. Rath seconded to approve of the funding request. Ms. McDuffie called for the vote and the following resolution was unanimously approved.

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (“AGENCY”) TO ENTER INTO A FUNDING AGREEMENT FOR ECONOMIC DEVELOPMENT PURPOSES WITH UNIVERSITY AT BUFFALO FOUNDATION, INC. TO PROVIDE FUNDING IN THE AMOUNT OF \$20,000 FOR FISCAL YEAR 2016 FROM THE AGENCY’S U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (“HUD”) URBAN DEVELOPMENT ACTION GRANT (“UDAG”) REFLOW FUND

Policy Committee Update. Mr. Lipsitz provided an update of the most recently completed Policy Committee meeting, noting that the Policy Committee approved by a vote 7 to 0, with 1 abstention, to approve of the Trahwen-G, LLC project to be presented to the Board at today’s meeting. Mr. Lipsitz also stated that the Policy Committee is still contemplating various options in response to the Derrick Corporation recapture and employment issue, and anticipates making a recommendation to the Board at its June meeting.

There being no further discussion, Ms. McDuffie directed that the report be received and filed.

## **INDUCEMENT RESOLUTUIONS**

Trahwen-G, LLC, 135 Buell Avenue, Cheektowaga, New York. Ms. Fiala reviewed this proposed sales tax and real property tax abatement benefits project involving the construction of an approximately 100,000 sq. ft. spec building to create first class, clean and productive office, warehouse and distribution space at moderate rental costs ideally suited to start-up and expansion minded businesses.

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 and real property tax abatement benefits, submit on at least an annual basis or as otherwise indicated below, through the term 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 \$4,573,000 (which represents the product of 85% multiplied by \$5,380,000, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that the Company has created and maintained full-time equivalent (“FTE”) employment at the Facility equal to thirty (30) FTE employees [representing the product of 85% multiplied by thirty-five (35) (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.

Mr. Poloncarz then expressed general concern for speculative building projects. Mr. Poloncarz stated that while he supports the project, he would like to see proof that such speculative building projects are actually creating new jobs, and not just moving one warehouse job from one area of the county to another area of the county. As such, Mr. Poloncarz requested that the Agency obtain proof that the jobs to be created are in fact net new jobs, creating net new wealth for the region.

Ms. Gallagher-Cohen moved and Mr. Mesiah seconded to approve of the project. Mr. Lipsitz noted that he would be abstaining from the vote, but called for the vote and the following resolutions were unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT ACTION TO UNDERTAKE THE TRAHWEN-G, LLC (THE “COMPANY”) PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF TRAHWEN-G, 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 AND (B) 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 AGREEMENT, AND RELATED DOCUMENTS

## MANAGEMENT TEAM REPORTS

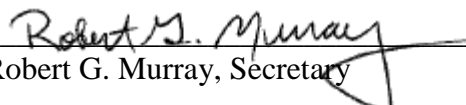
Adaptive Re-Use Tour. Mr. Weathers reviewed the 2017 budget review process timeline. Mr. Weathers then informed members that the Agency is proposing to conduct an “adaptive re-use tour” on June 29, 2016 for purposes of educating members on the various adaptive re-use projects that have been approved by the Agency within Erie County.

Net Zero Energy Building Feasibility Study. Mr. Weathers next presented the members with the results of the Net Zero Energy Building Feasibility Study and confirmed that the next step in this process will be a request made to the Agency to approve of funds for undertaking the design of the project.

Potential Property Acquisition. Mr. Weathers then asked that a motion be made to enter into Executive Session to discuss the proposed acquisition of real property the disclosure of which would substantially affect the value thereof. Mr. Poloncarz moved and Mr. Vukelic seconded to enter into Executive Session. The motion was unanimously approved, and at 11:46 a.m., the members entered into Executive Session. At 12:10 p.m., a motion to end Executive Session was made by Ms. McDuffie and seconded by Mr. Poloncarz and unanimously approved, and the members ended their Executive Session.

There being no further business to discuss, Ms. McDuffie adjourned the meeting at 12:10 p.m.

Dated: May 25, 2016

  
Robert G. Murray, Secretary