

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

November 15, 2012

MINUTES OF THE MEETING

Members of the Authority present: Al Koepp, Chairman; Matt McDermott representing the Executive Branch; Jim Kelly representing the State Treasurer; Fred Zavaglia representing the Department of Labor and Workforce Development; Nancy Graves representing the Commissioner of the Department of Banking and Insurance, Public Members: Joseph McNamara, Vice Chairman; Marjorie Perry, Richard Tolson, Charles Sarlo, Ray Burke, First Alternate Public Member; Elliot M. Kosoffsky, Second Alternate Public Member; and Brian Nelson, Third Alternate Public Member.

Also present: Michele Brown, Chief Executive Officer of the Authority; Timothy Lizura, President and Chief Operating Officer; Bette Renaud, Deputy Attorney General; Brett Tanzman, Governor's Authorities' Unit; and staff.

Absent: Colleen Kokas representing the Commissioner of the Department of Environment Protection, Public Members Larry Downes, Harold Imperatore and Rodney Sadler, Non-Voting Member.

Pursuant to the Internal Revenue Code of 1986, Ms. Brown announced that this was a public hearing and comments are invited on any Private Activity bond projects presented today.

In accordance with the Open Public Meetings Act, Ms. Brown announced that notice of this meeting has been sent to the *Star Ledger* and the *Trenton Times* at least 48 hours prior to the meeting, and that a meeting notice has been duly posted on the Secretary of State's bulletin board at the State House.

MINUTES OF AUTHORITY MEETING

The next item of business was the approval of the October 9, 2012 meeting minutes. A motion was made to approve the minutes by Mr. Tolson, seconded by Mr. McNamara, and was approved by the 12 voting members present.

The next item of business was the approval of the October 9, 2012 executive session meeting minutes. A motion was made to approve the minutes by Mr. McNamara, seconded by Mr. McDermott, and was approved by the 12 voting members present.

FOR INFORMATION ONLY: The next item was the presentation of the Chief Executive Officer's Monthly Report to the Board

BOND PROJECTS

AMENDED BOND RESOLUTIONS

PROJECT: Hudson Community Enterprises, Inc. **APPL.#37666**
LOCATION: Jersey City/Hudson County
PROCEEDS FOR: Refinancing
FINANCING: \$760,000 est. (Part of a \$1,520,000 Tax-Exempt Bond with P37700)
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

PROJECT: Hudson Community Enterprises, Inc. **APPL.#37700**
LOCATION: Jersey City/Hudson County
PROCEEDS FOR: Refinancing
FINANCING: \$760,000 est. (Part of a \$1,520,000 Tax-Exempt Bond with P37666)
MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. Nelson **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 1
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

PROJECT: Logan Generating Company, L.P. & **APPL.#37625**
Keystone Urban Renewal L. P.
LOCATION: Swedesboro/Gloucester County
PROCEEDS FOR: Refinancing
FINANCING: \$60,300,000 max. (Tax-Exempt Bond)
MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. McDermott **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 2
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

COMBINATION PRELIMINARY AND BOND RESOLUTIONS

PROJECT: Dakota Properties, Inc. **APPL.#37676**
LOCATION: Multi County
PROCEEDS FOR: Refinancing
FINANCING: \$3,020,000 Tax-Exempt Bond
MOTION TO APPROVE: Mr. Zavaglia **SECOND:** Mr. McNamara **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

PROJECT: Twin Oaks Community Services, Inc. **APPL.#37675**
LOCATION: Multi County
PROCEEDS FOR: Refinancing
FINANCING: \$2,285,000 Tax-Exempt Bond
MOTION TO APPROVE: Mr. Tolson **SECOND:** Ms. Perry **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

PROJECT: Girl Scouts of the Jersey Shore, Inc. **APPL.#37753**
LOCATION: Monmouth County
PROCEEDS FOR: Refinancing
FINANCING: \$1,020,000 Tax-Exempt Bond
MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. McNamara **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 5
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

PROJECT: Moorestown Friends School Association **APPL.#37749**
LOCATION: Moorestown Twp/Burlington County
PROCEEDS FOR: Refinancing
FINANCING: \$8,500,000 (max.) Tax-Exempt Bond
MOTION TO APPROVE: Mr. McDermott **SECOND:** Mr. Kosoffsky **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 6
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

PROJECT: Kingston Educational Holdings 1, Inc. **APPL.#37793**
LOCATION: Newark/Essex County
PROCEEDS FOR: Renovations
FINANCING: \$17,465,000 Qualified Zone Academy Bond/ \$14,635,000 Qualified School construction bond
MOTION TO APPROVE: Mr. Tolson **SECOND:** Ms. Graves **AYES:** 11
RESOLUTION ATTACHED AND MARKED EXHIBIT: 7
Ms. Perry recused herself because she has been approached regarding the project.

PUBLIC HEARING ONLY

PROJECT: Ironbound Community Corp.

APPL.#37751

LOCATION: Newark/Essex

PROCEEDS FOR: Refinancing

PUBLIC HEARING: Yes

PUBLIC COMMENT: None

LOANS/GRANTS/GUARANTEES

CAMDEN ECONOMIC RECOVERY BOARD

PROJECT: Rowan University

APPL.#37597

LOCATION: Camden City/Camden

PROCEEDS FOR: Construction and renovation costs

FINANCING: \$5.1 million non-recoverable grant established under the Higher Education and Regional Health Care Development fund (HERHC).

MOTION TO APPROVE: Ms. Graves **SECOND:** Mr. McNamara **AYES:** 11

RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

Mr. Nelson recused himself because his firm has done work for the University.

ITEM: ERB Business Incentive Grant Program

REQUEST: To approve funding authorization to extend the ERB Business Incentive Grant Programs and additional 12 months through September 30, 2013.

MOTION TO APPROVE: Mr. Tolson **SECOND:** Mr. Kosoffsky **AYES:** 12

RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

INCENTIVE PROGRAMS

BUSINESS EMPLOYMENT INCENTIVE PROGRAM

BUSINESS RETENTION & RELOCATION ASSISTANCE GRANT PROGRAM

ITEM: Policy clarifications and proposed rule changes for the 80% Statewide Employment Test under the Business Employment Incentive Program

REQUEST: Consent to rule changes to clarify the intent of the 80% statewide employment test for BEIP, and expand the definition of Base employment in the regulations to clarify the employees included for the purposes of the 80% statewide employment test

MOTION TO APPROVE: Mr. Kosoffsky **SECOND:** Mr. McDermott **AYES:** 12

RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

PROJECT: Northern Building Products, Inc. **APPL.#37776**
LOCATION: Teterboro/Bergen **BUSINESS:** Manufacturing
GRANT AWARD: 50% **Business Employment Incentive grant**, 10 years
MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. Burke **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

PROJECT: Northern Building Products, Inc. **APPL.#37777**
LOCATION: Teterboro/Bergen **BUSINESS:** Manufacturing
GRANT AWARD: \$333,000 (est.), **Business Retention and Relocation Assistance grant**, 1 year
MOTION TO APPROVE: Mr. McNamara **SECOND:** Mr. Burke **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

PROJECT: PHH Corporation and subsidiaries **APPL.#37775**
LOCATION: Unknown **BUSINESS:** Financial Services
GRANT AWARD: 40% **Business Employment Incentive grant**, 10 years
MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. McNamara **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

PROJECT: The Royal Group **APPL.#37781**
LOCATION: Kearny/Hudson **BUSINESS:** Professional Service
MOTION TO APPROVE: Mr. McDermott **SECOND:** Ms. Perry **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11
GRANT AWARD: 75% **Business Employment Incentive grant**, 10 years

ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM

ITEM: Project Rate of Return Methodology

REQUEST: Approve new financial model by which the maximum Internal Rate of Return will be determined for projects seeking assistance under the Economic Redevelopment and Growth Program.

MOTION TO APPROVE: Mr. McNamara **SECOND:** Mr. McDermott **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

ITEM: VNO Wayne town Center, LLC

REQUEST: To approve the ERG application for VNO Wayne Town Center, LLC for 13.38% of the eligible costs, not to exceed \$13, 513,000.

MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. Kosoffsky **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 14

GROW NEW JERSEY ASSISTANCE PROGRAM

PROJECT: WWRD US LLC

LOCATION: Robbinsville Twp/Mercer

REQUEST: To agree with the finding that jobs are at risk as represented in the CEO certification

MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. Tolson **AYES:** 12

RESOLUTION ATTACHED AND MARKED EXHIBIT: 15

PROJECT: WWRD US LLC

LOCATION: Robbinsville Twp/Mercer

REQUEST: To approve the \$16,800,000 Grow New Jersey award

MOTION TO APPROVE: Mr. Tolson **SECOND:** Mr. McNamara **AYES:** 12

RESOLUTION ATTACHED AND MARKED EXHIBIT: 16

TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM

ITEM: Technology Business Tax Certificate Transfer Program

REQUEST: To affirm the Hearing Officer's report regarding the declinations of Celator Pharmaceutical, Inc., Globalprivateequity.com, Inc., Midawi Holdings, Inc., PTC Therapeutics, Inc., and Svelte Medical Systems, Inc..

CEO Brown stated that she disagreed with the Hearing Officer's recommendation regarding Svelte Medical System, Inc. and recommended that based on its appeal and follow-up correspondence, Svelte be approved under the Program.

Chairman Koeppe asked if there were any comments from representatives of the companies prior the Board's discussion and vote. Chairman Koeppe also stated that the Board would most likely go into Executive Session following comment to discuss the legal issues surround each appeal.

PUBLIC COMMENT

Scott Jackson, CEO, Celator Pharmaceuticals stated that at the time of the application deadline, Celator believed that it satisfied the available definition of full time employment and that they expected to exceed the requirement at the time of closing which would be the next requirement.

He stated that the company had a 10th employee who met the definition which was provided in the application, the FAQ, the webinar and the feedback which was provided in the rejection of the appeal. That employee was a summer intern and on September 4th, he learned that it

would not count towards the threshold. He added that they are an emerging biotech company, they had every intention of hiring someone other than the temp employee, and feel they met the condition.

Mr. Sarlo asked if the company had been in the same position with employment when applying to the program in previous years. Mr. Jackson responded that the company had not been in this position before.

Ms. Graves asked Mr. Jackson that if he had know that temporary employees would not be allowed, would he have done anything different. Mr. Jackson responded that he made every attempt to find a full time employee, but due to the uncertainty of the position, he had difficulty finding a qualified applicant and hired an intern.

Chairman Koeppé thanked Mr. Jackson for his comments.

Chairman Koeppé asked if there were any additional public comments.

Kenneth Damato, CEO, Midawi Holdings, Inc., addressed the board and began reading from a prepared statement which provided background on his company. Chairman Koeppé asked that he speak specifically to the topic at hand which is the NOL appeal.

Mr. Damato stated that he was contesting the fact that the EDA does not recognize “portals” as a technology business and by “portal” one can only assume that to mean all internet businesses and their website. He went on to state that he thought the company fulfilled the criteria regarding registered copyrights. Mr. Damato stated while they were not formally contesting the Hearing Officer’s report, he hoped the Board would reconsider.

Mr. Nelson stated that the Board cannot make policy, and that Mr. Damato should seek changes to the Legislation.

Chairman Koeppé asked if there were any additional public comments.

Douglas Miles, Chairman & CEO, GPE, Inc. referred to a prepared statement he presented to the Board. He stated that he felt his company met the criteria for full time employment because the program materials in no written form or place deny the eligibility of University students to be hired as full time employees of an applicant company, regardless of what name or title they are given. He stated that the title of Intern is used to convey to other employees a level of experience or inexperience and nothing more. Wages are equivalent to other employees not having that title attached to their name. Regarding healthcare coverage, he added that an issue arose with Amerihealth where they wanted six months of advance premiums for four employees. He stated that this created a financial hardship and they were late obtaining coverage. He asked that consideration be given for these extenuating circumstances.

Chairman Koeppé asked if there were any additional public comments.

There were no additional comments.

EXECUTIVE SESSION

The next item was to adjourn the public session of the meeting and enter into Executive Session to seek legal advice regarding questions pertaining to the NOL appeals. The minutes will be made public when the need for confidentiality no longer exists.

MOTION TO APPROVE: Mr. Tolson **SECOND:** Mr. McNamara **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 17

The Board returned to Public Session.

Chairman Koeppé stated that two members would leave the meeting due to obligations, although they had stayed for the entirety of the executive session portion.

Mr. McNamara and Mr. Tolson left the meeting at this time.

Chairman Koeppé stated that the board takes these matters very seriously and stated that during Executive Session the Board had received guidance on and discussed the legal issues surrounding the appeals. He stated that in his opinion, based on the legal discussion:

- Midawi. The copyright issue cannot be overturned.
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- GPE. The request for healthcare coverage is not subject to interpretation, and the Board cannot provide a period of grace.
- Celator Pharmaceuticals. Because the company met the timeframe for fulltime employment at the time of application, we depart from the Hearing Officer's findings, and support approval of the applicant.
- Svelte. Depart from the Hearing Officer's findings, and support approval of the applicant.
- PTC Therapeutics – Adopt the recommendations of the hearing officer.

ITEM: Technology Business Tax Certificate Transfer Program

REQUEST: To depart from the Hearing Officer's findings report regarding the declinations of Celator Pharmaceutical, Inc., and Svelte Medical Systems, Inc., thereby approving them, and to uphold the remaining findings of the Hearing Officer's report including the declinations of Globalprivateequity.com, Inc., Midawi Holdings, Inc., PTC Therapeutics, Inc and all other findings.

The board members discussed the merits of the recommendations of the Chair. Mr. Nelson stated that the written statement of Midawi indicates that the company did not meet the legal requirements of the program.

MOTION TO APPROVE: Ms. Graves **SECOND:** Ms. Perry **AYES:** 10
RESOLUTION ATTACHED AND MARKED EXHIBIT: 18

BOARD MEMORANDUMS

FOR INFORMATION ONLY: The next item is a summary of the projects approved under Delegated Authority in October 2012:

New Jersey Business Growth Fund: Jackman Kerby Properties, LLC (P37774)

REAL ESTATE

ITEM: Transfer of Commercial Development Parcel B to New Jersey Department of Treasury - New Jersey Performing Arts Center Project (Newark)

REQUEST: To authorize the Chief Executive Officer and/or the President/Chief Operating Officer to execute a Deed of Conveyance, Lease Amendment and any other documents necessary to transfer the subject property to the Department of Treasury, all subject to the final approval of bond counsel and the Attorney General's Office.

MOTION TO APPROVE: Mr. Kosoffsky **SECOND:** Mr. Sarlo **AYES:** 9

RESOLUTION ATTACHED AND MARKED EXHIBIT: 19

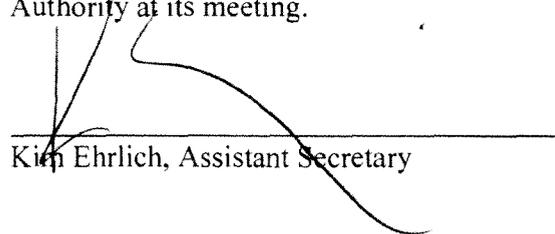
Ms. Perry recused herself because she is familiar with the project.

PUBLIC COMMENT

Mr. Damato thanked the board for its consideration of the application and said he would seek counsel from others to find another way to help his company in their goals. He stated that he had a registered copyright, regardless of what the written statement prepared by his lawyer stated. When asked by Ms. Renaud, he stated that he had a registered copyright on the video and chart associated with his business.

The being no further business, on a motion Ms. Graves, and seconded by Ms. Perry, the meeting was adjourned at 12:30pm.

Certification: The foregoing and attachments represent a true and complete summary of the actions taken by the New Jersey Economic Development Authority at its meeting.



Kip Ehrlich, Assistant Secretary

