

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

December 5, 2013

MINUTES OF THE SPECIAL MEETING

Members of the Authority present: Al Koepp, Chairman; Commissioner Kobylowski of the Department of Banking and Insurance; and Public Member Rich Tolson.

Present via conference call: State Treasurer Andrew Sidamon-Eristoff; Colleen Kokas representing the Commissioner of the Department of Environmental Protection; Public Members: Joseph McNamara, Vice Chairman; Charles Sarlo, Brian Nelson; and Harold Imperatore, Third Alternate Public Member.

Also present: Michele Brown, Chief Executive Officer of the Authority; Timothy Lizura, President and Chief Operating Officer; Deputy Attorney General Bette Renaud; and staff.

Absent: Melissa Orsen representing the Executive Branch; Fred Zavaglia representing the Commissioner of the Department of Labor and Workforce Development; Public Members Larry Downes, Marjorie Perry, Jerry Langer, Ray Burke, First Alternate Public Member; Elliot M. Kosoffsky, Second Alternate Public Member; and Rodney Sadler, Non-Voting Member.

Chairman Koepp called the meeting to order at 12pm.

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

Chairman Koepp opened the meeting by thanking the Board for coming together to address an issue of an emergent nature. He also thanked the staff of the EDA for their hard work.

CEO Michele Brown stated that today the Board will be asked to discuss the technology business tax certificate transfer program appeals of two companies, Conolog Corporation and Absecon Mills, Inc.

Ms. Brown stated that Conolog Corporation was declined because it failed to demonstrate that it is operating as a technology business as required by statute, and had not demonstrated that it had protected proprietary intellectual property as the applicant's primary business as required by law.

Based on the initial appeal review it was determined that there was not sufficient information presented to overturn the declinations previously issued and conclude that the copyright submitted with its NOL Program application is Iconology's primary business as a teleprotection utilities and communication service provider.

Ms. Brown added that on November 19, 2013, the Hearing Officer, Heather O'Connell received additional clarifying information from Conolog by e-mail and followed-up with some additional questions which were answered the next day.

After review of the clarifying information provided by the company, Ms. O'Connell was persuaded that the company has demonstrated it owns or licenses and meets the regulatory requirement for protected proprietary intellectual property. Further, the protected proprietary intellectual property constitutes its primary business involving teleprotection utilities and communication service and, therefore, the company meets the definition of being a new or expanding technology or biotechnology.

Ms. Brown stated that as a result, she believes that Conolog has produced sufficient evidence to overturn the declinations previously issued and she recommends that Conolog Corporation be approved for participation in the NOL Program.

TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM

ITEM: Technology Business Tax Certificate Transfer Program Appeals
REQUEST: To approve the Hearing Officer's recommendation to reverse the declination of the NOL Program application for Conolog Corporation.
MOTION TO APPROVE: Mr. Tolson **SECOND:** Commissioner Kobylowski **AYES:** 9
RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

Ms. Brown stated that Absecon Mills, Inc. was declined because it failed to demonstrate that it is operating as a technology business for its traditional textile weaving business, has not demonstrated that it has protected proprietary intellectual property as the applicant's primary business, and failed to demonstrate that it had a net operating loss in 2011.

She noted that based on the initial appeal review it was determined that (i) the provisional patent application was not in the name of the company at the NOL Program deadline; (ii) the company's primary business at the time of NOL Program application was textile weaving and not a protected proprietary intellectual property innovative ballistics textile development technology business in connection with weave structure and improvements in related weights and measures; and (iii) the financial statements provided with the application were not prepared according to GAAP. It was also noted that EDA had received a copy of a letter of determination from the Division of Taxation stating that the company held an S-Corporation status and therefore did not have any net operating losses.

Ms. Brown stated that after numerous emails sent on November 19th and 20th by Ms. O'Connell, she subsequently spoke with Mr. Randolph Taylor, President and CEO asking whether he would be submitting additional information and/or documentation. At that time he informed the Hearing Officer that he was accepting the initial appeal decision to uphold the declination due to the above determination by the Division of Taxation.

Ms. Brown stated that since no additional information was provided regarding the company's PPIP or financial statements I am unable to recommend that the Board overturn the declinations previously issued. Further, based on this determination by the Division of Taxation, that the company continues to be a New Jersey S-Corporation resulting in any NOL's not having a benefit value to be sold, I conclude that the company is not eligible to participate in the NOL Program which requires that net operating losses are to be utilized.

ITEM: Technology Business Tax Certificate Transfer Program Appeals

REQUEST: To approve the Hearing Officer's recommendation to uphold the declination of NOL Program application for Absecon Mills, Inc.

MOTION TO APPROVE: Mr. Tolson **SECOND:** Commissioner Kobylowski **AYES:** 9

RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

Ms. Brown stated that at the September 12, 2013 Board Meeting, the Members considered 62 requests from companies to participate in the NOL Program. A total of 51 requests were recommended for approval and 11 were disapproved. Following the Board meeting, the 11 companies that were disapproved were sent written notice of the Board's action along with the reasons for the disapproval. In that letter, applicants were notified of the decision and were provided 20 days to appeal. Of the 11 disapproved, 7 filed appeals by the deadline of October 2, 2013.

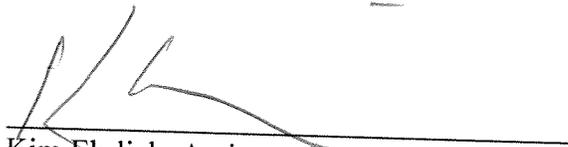
Finally, Ms. Brown added that the Division of Taxation is working with Absecon Mills, Inc. to try and obtain approval through other programs.

PUBLIC COMMENT

There was no public comment.

There being no further business, on a motion by Mr. Tolson, seconded by Mr. McNamara, the meeting was adjourned at 12:15 pm.

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.



Kim Ehrlich, Assistant Secretary