

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

February 8, 2011

MINUTES OF THE MEETING

Members of the Authority present: Al Koeppe, Chairman; John Hutchison representing the Lt. Governor's office; Steve Petrecca, representing the State Treasurer; Joe Latoof representing the Commissioner of the Department of Labor and Workforce Development; Wayne Staub representing the Commissioner of the Department of Environment Protection; Richard Poliner, representing the Commissioner of the Department of Banking and Insurance; Public Members: Joseph McNamara, Vice Chairman; Charles Sarlo, Steve Plofker, Marjorie Perry, Timothy Carden, Laurence Downes, Rich Tolson, Raymond Burke, First Alternate Public Member; Elliot M. Kosoffsky, Second Alternate Public Member; Kevin Brown, Third Alternate Public Member; and Rodney Sadler, Non-Voting Member.

Also present: Caren Franzini, Chief Executive Officer of the Authority; Bette Renaud, Deputy Attorney General, Brandon Minde, Assistant Counsel, Governor's Authorities' Unit and guests.

Chairman Koeppe called the meeting to order at 10 a.m.

Pursuant to the Internal Revenue Code of 1986, Ms. Franzini 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. Franzini 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 January 11, 2011 meeting minutes. A motion was made to approve the minutes by Mr. Latoof, seconded by Ms. Perry, and was approved by the 14 voting members present.

Mr. Carden and Mr. Downes abstained because they were not present.

The next item of business was the approval of the February 1, 2011 special meeting minutes. A motion was made to approve the minutes by Mr. Carden, seconded by Ms. Perry, and was approved by the 12 voting members present.

Mr. Sarlo noted that he was not present at the meeting.

Members Sarlo, Plofker, Kosoffsky and Brown abstained because they were not present.

The next item was the presentation of the Chief Executive Officer's Monthly Report to the Board. **(For Informational Purposes Only)**

BOND RESOLUTIONS

Bond Resolutions

PROJECT: Friends of Central Jersey Arts Charter School, Inc. **APPL.#34926**
LOCATION: Plainfield/Union Cty.
PROCEEDS FOR: building renovation
FINANCING: \$3,000,000 Qualified School Construction Bond – Direct Pay Tax Credit Bond and \$250,000 Series B Taxable Bond
MOTION TO APPROVE: Mr. Tolson SECOND: Mr. Latoof AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

COMBINATION PRELIMINARY AND BOND RESOLUTIONS

PROJECT: Sussex County Charter School for Technology, Inc. **APPL.#35152**
LOCATION: Sparta/Sussex Cty.
PROCEEDS FOR: building acquisition
FINANCING: \$3,000,000 Qualified School Construction Bond – Direct Pay Tax Credit Bond
MOTION TO APPROVE: Mr. Carden SECOND: Mr. Kosoffsky AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

PROJECT: NCA Facility, Inc. **APPL.#34894**
LOCATION: Newark/Essex Cty.
PROCEEDS FOR: equipment purchase
FINANCING: \$7,371,670 Qualified School Construction Bond – Direct Pay Tax Credit Bond
MOTION TO APPROVE: Mr. Tolson SECOND: Mr. Brown AYES: 14
RESOLUTION ATTACHED AND MARKED EXHIBIT:3

Mr. Carden abstained because he is on the board.

Ms. Perry abstained because she is familiar with the project and may bid on work in the future.

PRELIMINARY RESOLUTIONS

PROJECT: 810 Broad St. Urban Renewal Company LLC **APPL.#34850**
LOCATION: Newark/Essex Cty.
PROCEEDS FOR: building acquisition and renovation
MOTION TO APPROVE: Mr. Carden SECOND: Mr. Poliner AYES: 15
RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

Ms. Perry abstained because she is familiar with the project and may bid on work in the future.

PROJECT: Shining Schools, Inc. **APPL.#34992**
LOCATION: East Orange/Essex Cty.
PROCEEDS FOR: building acquisition and renovation
MOTION TO APPROVE: Mr. Brown SECOND: Mr. Carden AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

PROJECT: Yeshivat Keter Torah **APPL.#35112**
LOCATION: Eatontown/Monmouth Cty.
PROCEEDS FOR: building acquisition
MOTION TO APPROVE: Ms. Perry SECOND: Mr. Brown AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

Chairman Koeppe stated that he would request that DAG Renaud provide a summary of the First Amendment analysis in executive session at a future date in order to acquaint the Members on the process and the outcomes.

PUBLIC HEARING ONLY

PROJECT: Homestead at Mount Laurel, LLC **APPL.#34547**
LOCATION: Mt. Laurel/Burlington Cty.
PROCEEDS FOR: building construction
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

AMENDED BOND RESOLUTIONS

PROJECT: Clara Maass Health System, Inc. and **APPL.#08645**
Clara Maass Medical Center
LOCATION: Plainfield/Union Cty.
FINANCING: \$70,535,000 Tax-Exempt Bond
REQUEST: Approval of disposition of the sale proceeds of the project facility financed with the proceeds of a tax-exempt bond.
MOTION TO APPROVE: Mr. Carden SECOND: Mr. Latoof AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 7
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

PROJECT: Damascus Bakery Inc. **APPL.#17629**
LOCATION: Newark/Essex Cty.
FINANCING: \$7,750,000 Tax-Exempt Bond
REQUEST: Amend the bond issue to change the project site to 60 McClellan Street, Newark
MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. Poliner **AYES: 16**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 8
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

PETROLEUM UNDERGROUND STORAGE TANK PROGRAM

The following projects were presented under the Petroleum Underground Storage Tank Program.

MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. Downes **AYES: 16**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

PROJECT: Jennifer Koveleski **APPL.#33758**
LOCATION: Medford/Burlington Cty.
PROCEEDS FOR: upgrade, closure and site remediation
FINANCING: \$181,859 Petroleum UST Remediation, Upgrade, & Closure Fund Grant

PROJECT: Anthony Perrelly **APPL.#34365**
LOCATION: Edgewater/Bergen Cty.
PROCEEDS FOR: upgrade, closure and site remediation
FINANCING: \$105,930 Petroleum UST Remediation, Upgrade, & Closure Fund Grant

PROJECT: Peterson-Little VFW **APPL.#33460**
LOCATION: Cape May City/Cape May Cty.
PROCEEDS FOR: upgrade, closure and site remediation
FINANCING: \$165,331 Petroleum UST Remediation, Upgrade, & Closure Fund Grant

PROJECT: T&J Service Center Inc. **APPL.#33058**
LOCATION: Madison/Morris Cty.
PROCEEDS FOR: upgrade, closure and site remediation
FINANCING: \$290,086 Petroleum UST Remediation, Upgrade, & Closure Fund Grant

PROJECT: The Community YMCA **APPL.#31770**
LOCATION: Matawan/Monmouth Cty.

PROCEEDS FOR: upgrade, closure and site remediation

FINANCING: \$212,693 Petroleum UST Remediation, Upgrade, & Closure Fund Grant

PROJECT: Robert Smelson and Arlene Smelson

APPL.#33548

LOCATION: Freehold/Monmouth Cty.

PROCEEDS FOR: upgrade, closure and site remediation

FINANCING: \$7,905 Petroleum UST Remediation, Upgrade, & Closure Fund Grant

The next item is a summary of all Petroleum Underground Storage Tank Program Delegated Authority Approvals for the month of January 2010. **(For Informational Purposes Only)**

HAZARDOUS DISCHARGE SITE REMEDIATION FUND PROGRAM

The following municipal projects were presented under the Hazardous Discharge Site Remediation Fund Program.

MOTION TO APPROVE: Mr. Carden SECOND: Mr. Downes AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

PROJECT: Sayreville Economic Redevelopment Agency

APPL.#35574

LOCATION: Sayreville/Middlesex Cty.

PROCEEDS FOR: remedial action

FINANCING: \$5,000,000 Hazardous Discharge Site Remediation Fund
(closing subject to evidence of the municipality's required 25% match)

PROJECT: Borough of Somerville (Somerville Landfill)

APPL.#34449

LOCATION: Somerville/Somerset Cty.

PROCEEDS FOR: remedial investigation and remedial action

FINANCING: \$1,193,833 Hazardous Discharge Site Remediation Fund
(closing subject to evidence of the municipality's required 25% match)

The next item is a summary of the Hazardous Discharge Site Remediation Fund Program Delegated Authority Approvals for the month of January 2011. **(For Informational Purposes Only)**

INCENTIVE PROGRAMS

BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM

The next item is to approve proposed amendments to the rules implementing the Business Retention and Relocation Assistance Grant (BRRAG) Program based on recent statutory

revisions enacted by Governor Chris Christie pursuant to P.L. 2010, c. 123, and to authorize staff to submit to the New Jersey Register subject to the review of the Division of Law.

**MOTION TO APPROVE: Mr. Brown SECOND: Mr. Carden AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11**

BUSINESS INCENTIVE EMPLOYMENT PROGRAM

PROJECT: Amcor Specialty Packaging Glass Tubing Americas **APPL.#34813**
LOCATION: Millville/Cumberland **BUSINESS:** glass manufacturing
GRANT AWARD: 80% Business Employment Incentive grant, 10 years

**MOTION TO APPROVE: Mr. Latoof SECOND: Mr. McNamara AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12**

GRANT AWARD: \$387,000 (estimate), 6 years Business Retention and Relocation Assistance Grant

**MOTION TO APPROVE: Mr. Plofker SECOND: Mr. Downes AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 13**

PROJECT: Bracco Diagnostics Inc. and Affiliates **APPL.#35150**
LOCATION: TBD **BUSINESS:** medical device technology
GRANT AWARD: 50% Business Employment Incentive grant, 10 years

**MOTION TO APPROVE: Mr. Staub SECOND: Mr. Carden AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12**

GRANT AWARD: \$398,250 (estimate), 6 years Business Retention and Relocation Assistance Grant

**MOTION TO APPROVE: Ms. Perry SECOND: Mr. Latoof AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 14**

PROJECT: Regeneron Pharmaceuticals, Inc. **APPL.#35151**
LOCATION: TBD **BUSINESS:** biotechnology
GRANT AWARD: 40% Business Employment Incentive grant, 10 years

**MOTION TO APPROVE: Mr. Plofker SECOND: Mr. Stuaab AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12**

BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM

PROJECT: Bayer Healthcare LLC and Affiliates
LOCATION: TBD **BUSINESS:** medical device technology
GRANT AWARD: \$14,094,000 (estimate), 6 years Business Retention and Relocation Assistance Grant

**MOTION TO APPROVE: Mr. Carden SECOND: Mr. Perry AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 15**

REQUEST: Extend the loan maturity 5 years from 7/1/10 to 7/1/15, with an option to extend 2 additional years to 7/1/17 to provide time to complete environmental remediation and to sell the subject property.

MOTION TO APPROVE: Mr. Carden SECOND: Mr. Burke AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 20

The next item is a summary of projects approved under Delegated Authority in January 2011.
(For Informational Purposes Only)

New Jersey Business Growth Fund: The Tumaliuan Group LLC

Small Business Fund Program: WJJ & Company LLC d/b/a/ Papertec

REAL ESTATE

The next item is to enter into an Amendment to the Lease Agreement with Chromocell Corporation for an additional 10,676 square feet of office and lab space on the first floor of the Tech IV building.

MOTION TO APPROVE: Mr. Brown SECOND: Mr. Poliner AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 21

The next item is to enter into a Lease Agreement with Provid Pharmaceuticals, Inc. for 7,066 square feet of generic lab space in the Biotechnology Development Center II in the Tech III building at the Technology Centre of New Jersey.

MOTION TO APPROVE: Mr. Brown SECOND: Ms. Perry AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 22

The next item is to amend the lease for WellGen, a tenant at the Commercialization Centre for Innovative Technologies at the Technology Centre of New Jersey, to allow a reduction in the company's leased premises from three offices and two labs down to one lab for the last eight months of their lease term.

MOTION TO APPROVE: Mr. Tolson SECOND: Mr. Latoof AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 23

The next item is to (1) demolish the Medical Building at the Technology Centre of New Jersey, (2) approve demolition and site restoration budget at the Technology Centre of New Jersey, and (3) amend the Tech Centre contract with Torcon, Inc.

MOTION TO APPROVE: Mr. Carden SECOND: Mr. Latoof AYES: 15
RESOLUTION ATTACHED AND MARKED EXHIBIT: 24

Mr. Tolson abstained because he is an investor in the Building Investment Trust of the AFL-CIO, co-owner of the Centre.

URBAN TRANSIT HUB TAX CREDIT PROGRAM

Chairman Koeppel reviewed the format for today's presentation and discussion of Panasonic's application for Urban Transit Hub Tax Credits. He noted he will ask Caren to present the project, will ask for public comment, and then provide for Board discussion.

Ms. Franzini began her presentation by noting that the Board had previously considered and approved the project at the January 11, 2011 Board meeting. She noted that it had come to EDA's attention that the public notice of that meeting with regards to the action to be taken may have been misinterpreted. In order to address this, the EDA publicly noticed the project for today's meeting and the Members are being asked to consider and act on the project again. She then reviewed the project details as presented in the memo shared with the Board, and staff's recommendation to award \$102,408,062.

PROJECT: Panasonic Corporation of North America

LOCATION: Newark/Essex Cty.

MAX AMOUNT OF TAX CREDITS: Estimated at \$102,408,062

**MOTION TO APPROVE: Mr. Downes SECOND: Mr. McNamara AYES: 15
RESOLUTION ATTACHED AND MARKED EXHIBIT: 25**

Mr. Sarlo abstained because SJP Properties is co-developer of the project, has a business relationship with his firm.

Chairman Koeppel asked for public comment.

PUBLIC COMMENT

Alan Magrini, SVP, Land Use and Development, Hartz Mountain Industries, Inc., addressed the Board. He noted that Hartz was here today to express the company's concern with EDA's administration of the Urban Transit Hub program and possible Board approval of a significant incentive of \$102 million for a project that was creating no new jobs and moving only 5 miles from its existing location. He shared Hartz Mountain's experience as a developer and landlord in NJ and acknowledged that many of the company's tenants had benefitted from programs administered by the EDA. He stated that the company was supportive of EDA's mission. However, the company believes that the Urban Transit Hub program administration and possible Board approval(s) that would allow for applicants moving employees intrastate is problematic and not the legislative purpose of the program.

He noted that the focus of the program was its transit nexus and capital investment and that it is a job growth program. He stated that legislative debate concluded in a focus on nine cities, a \$1.5 billion cap and clear limits on the program. In 2009, statutory changes included the net benefit test which was also added to make the program more restrictive.

He believes that the statute is very clear in its requirement that new jobs be created. While other statutes are not easily understood, the law is one of the better ones. Panasonic does not meet the requirements of the program as no new jobs are being added. EDA's administration

of the net benefits test must factor the economic impact of the loss of the company to Secaucus.

He then noted that the Business Retention and Relocation Assistance Grant Program administered by the EDA is meant to retain jobs in New Jersey and that recently the Legislature approved amendments to the program to keep Honeywell in NJ. In his view the Legislature would need to amend the Urban Transit Hub bill to allow for Panasonic to move from Secaucus to Newark as the current law doesn't allow for intrastate moves and the law is silent on the concept of "at risk" jobs that the EDA utilizes to calculate the net benefit test.

Mr. Magrini stated that the EDA's regulations mandate new jobs for program eligibility and he then read the definition of "new jobs" in the rules. He observed that the EDA began utilizing economic impact analysis in 2010. The methodology does not calculate the impact of the loss of jobs to one municipality if an applicant moves to another. As part of a "net" benefit test to determine impact to the state, there must be additions as well as deductions to the calculus. Under one build scenario that the company has proposed to Panasonic, Hartz would demolish and construct a building at the current location. If in considering this, one assumed the program did allow for intrastate moves, the analysis would have to deduct from the analysis the economic loss to Secaucus.

He submitted that the EDA's concept of "at risk" for calculating the net benefit analysis, detailed to the Board in a policy memo in the summer of 2010, does not have statutory or regulatory authorization. Further it is not clear how the EDA determines how jobs are at risk. Material facts would need to be submitted by the applicant. The EDA requires that the facts of the application, as provided by the company, be certified as true by the CEO. He does not believe that the material facts are provided in Panasonic's application and that the CEO certification to the representations made in the entire application are not as strong as a certification to the specific jobs at risk. He also noted that the net benefits test was based on 20 years of benefit, while the Panasonic lease was for 15 years, with two 5 year renewal options.

Gus Milano, representing Hartz, then addressed the Board. He acknowledged the company's previous interactions with the EDA on behalf of tenants in the past and his firm's satisfaction with the competency and expertise of the EDA. He stated that the company was here today due to a disagreement with EDA's policy interpretation that is leading to the move of Panasonic just a few miles down the road, creating a big void in Secaucus. He did not believe the program, which essentially incents a "free" building, was intended to allow for moves within state resulting in a detriment to the town losing the company.

David Drumeler, Business Administrator from the City of Secaucus, then spoke on behalf of the Mayor and Council. He acknowledged that Secaucus understood the need of some communities in distress to be provided with a jumpstart to revitalization but can't support programs that put one city against another. Secaucus would like to work with the Lt. Governor, the Governor, and the NJ Legislature to address this problem in the legislation. Public comment then concluded. Board Member Charles Sarlo stated that he would recuse himself from the project discussion and action as he had done at the previous presentation of the project in January due to his company's relationship with SJP Properties, a developer of the project.

EXECUTIVE SESSION

Chairman Koeppe noted that Hartz' contention that the EDA has misinterpreted the law in its implementation of the program would require legal guidance to the Board. He asked for a motion to enter Executive Session to seek legal advice from DAG Elizabeth Renaud. Ms. Renaud noted that the agenda today also included a loan settlement matter that requires Executive Session discussion. Accordingly, the Board would enter into Executive Session to discuss these items, and will return to Public Session to take action as warranted. Minutes of the Executive Session will be made available to the public upon the resolution of the pending legal matters.

The next item was to adjourn the public session of the meeting and enter into Executive Session to seek legal advice on the Hartz presentation and discuss a loan settlement matter.

**MOTION TO APPROVE: Mr. Plofker SECOND: Mr. Carden AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 26**

Chairman Koeppe opened the Public Session. He noted Board had a lengthy discussion of the legal issues and will continue that review after today. He has asked the Attorney General's Office for additional guidance. He will request a Special Meeting of the Board in one week's time to take up the matter again. He then suggested that Mr. Magrini provide a summary of Hartz concerns to the Attorney General's Office within the next three days so that all consideration is given to their assertions. He acknowledged a need for immediacy and a recognition that the delay may have created a opportunity to lose the company to another State.

The Chairman then turned to Hartz representation of the OPRA request and observed that that representation may be misinterpreted. He asked Ms. Renaud to discuss the status of the legal complaint, and the rationale that EDA used when redacting information from project application. She responded that a lawsuit is pending and as she is not the attorney involved in the actual OPRA review she could provide only general guidance on the OPRA process. Information has been provided to the requestor. The EDA allowed Panasonic to assert the need for confidentiality on certain aspects of the application. The EDA and the AG's Office review those requests and if they are deemed reasonable, information is redacted. The Panasonic application has had information redacted.

Mark Leonard, addressed the Board, noting that he was the attorney representing Hartz on the OPRA request. He stated that the records request extended beyond the application. Chairman Koeppe thanked him for the clarification.

EXECUTIVE SESSION

DAG Renaud stated that because the loan settlement matter discussed in the Executive Session is still being negotiated the board will need to go back into Executive Session. **The next item was to adjourn the public session of the meeting and re-enter Executive Session to vote on a loan settlement matter.**

**MOTION TO APPROVE: Mr. Carden SECOND: Mr. Latoof AYES: 16
RESOLUTION ATTACHED AND MARKED EXHIBIT: 27**

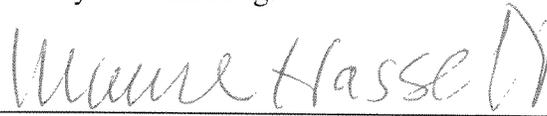
The Board returned to Public Session.

PUBLIC COMMENT

There was no comment from the public.

There being no further business, on a motion by Mr. Carden, and seconded by Mr. Latoof, the meeting was adjourned at 1pm.

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.

A handwritten signature in cursive script that reads "Maureen Hassett". The signature is written in dark ink and is positioned above a horizontal line.

Maureen Hassett, Assistant Secretary