

**COUNCIL ON DEVELOPMENT FINANCE**

**April 23, 2012**

**PUBLIC HEARING 382**

**THOSE PRESENT:**

Mr. Andy Lubin, Chairperson  
Steve Biener, Esquire  
Senator Brian Bushweller  
Honorable Nancy Cook  
Mr. Jack Riddle  
Representative Darryl Scott  
Mr. Fred Sears  
Mrs. Richelle Vible

Director Alan Levin  
Mrs. Rachael Mears  
Mr. Stephen Bach  
Mr. Gary Smith  
Mrs. Lee Porter  
Ms. Beverly Ennis  
Ann Marie Johnson, DAG  
Mrs. Bernice Whaley  
Mr. Tim McLaughlin  
Mr. Jeff Stone  
Mrs. Shannon Clark  
Ms. Patty Cannon  
Ms. Nikki Lavoie

**ALSO PRESENT:** Mr. Mike Morton – Controller General’s Office, Michelle Sloan – Office of Management and Budget; Mr. Benny Johnson, Local Union 626 Carpenters and Mr. Doug Lentz, Local Union 1823 Carpenters; Projects: **Foxfire Printing and Packaging, Inc.** – Mr. John Ferretti and Mr. Fritz Light; **InterDigital, Inc.** – Mr. Rich Brezski; **Capital One Financial Corporation** – Ms. Cathy MacFarlane, Ms. Emily Weems, Mr. Jim Brown, Ms. Stacey Cooper, Mr. Rick Gesoner Ms. Kristine Wellman, Mr. Jim Kelley and Mr. Dan Maxensen; **Chase Bank USA, National Association** – Mr. Paul Harterick, Mr. Don Mell; **B. F. Rich Co., Inc.** – Mr. George Simmons, Mr. Richard Rebman and Mr. Keith Fleury with Gunnip & Co.

**LOCATION:** Smyrna Rest Area, Route 13, Smyrna, Delaware 19977

**TIME:** 9:00 A.M.

**CALL TO ORDER**

The meeting was called to order at 9:05 A.M. by Chairman Lubin, on Monday, April 23, 2012.

**OLD BUSINESS:**

Mr. Biener made a motion that the minutes of the March 26, 2012 Council on Development Finance meeting be approved as presented. Senator Bushweller seconded the motion which was then adopted by unanimous vote.

**NEW BUSINESS:**

**Capital One Financial Corporation (“Capital One” or the “Applicant”)** - The Applicant is requesting grant funds in an amount up to \$7,122,024 from the Delaware Strategic Fund. The Applicant proposes to use the funds in the expansion of its current operations in the State of Delaware (the “Project”).

Director Levin presented this request to the Council. He stated that a year ago he and Governor Markell met with Capital One officials in Virginia, resulting in the request from Capital One today. He stated that Capital One is requesting a \$5,622,024 Strategic Fund Performance Grant and a Capital Expenditure Grant in an amount up to \$1,500,000.

Director Levin stated that Capital One’s intent is to acquire ING direct and the domestic support of HSBC. He further stated that the intent is to secure those jobs and set the seed for growth. He stated that Mr. Jim Kelley will be managing this particular division of Capital One.

Director Levin stated that this is a simple but important proposal. Five hundred jobs will be created by December 31, 2013, with average salaries of \$107,000. There will be a claw back period of five years. There will also be the retention of 1600 jobs. Director Levin stated that Capital One has assured DEDO that it intends to use Delaware contractors and suppliers.

Mr. Mortenson stated that Capital One began as a credit card issuer and as the business grew, other products were added such as auto and mortgage insurance. Later Capital One further diversified through acquisitions such as the acquisition of Chevy Chase in 2009. He stated that they were very pleased to close on the ING acquisition in February.

Mr. Mortenson stated that the headquarters are located in a low and moderate income level area in downtown Wilmington. He stated that Capital One will invest \$15,000,000 in building and equipment. He further stated that this expansion will bolster the prospect for local businesses. He commented that Capital One is committed to the use of diverse suppliers and proactively encouraging women and LBGQ. He also stated that mentorship will be provided. Mr. Mortenson stated that many of Capital One’s associates reside on many diversified boards promoting diversity and Capital One has received many awards for its commitment to diversity.

Mr. Kelley, who lives in Hockessin, is head of direct banking for Capital One. Prior to this acquisition, he served as ING’s Chief Operating Officer. Mr. Mortenson stated that the ING people are amazingly talented and Capital One is confident that it can help them expand. He further stated that Capital One will support online banking, retail banking,

risk management and the credit card operations. He further stated that Capital One expects to become an active business in Delaware and believes this is critical.

Ms. Cooper stated that she manages capital reinvestment (“CRA”) and community development, which is a part of Capital One’s community banking group. She stated that the CRA program has improved the lives of thousands by providing safe and affordable housing. She further stated that Capital One focuses its efforts within the assessment areas. The CRA staff has increased from 9 in 2005 to over 80 today, due to acquisitions. She stated that Capital One has the ability to translate what it learns from its wide range of services and therefore results in the outstanding rating of the awards and accomplishments it has received. Ms. Cooper further stated that they will continue their policy of pursuing programs with high impact on the community. She stated that they will extend coverage with loan products for affordable housing. She stated that they would also leverage existing programs by offering grant and volunteer products. She further stated that they have already extended their support to Junior Achievement and will continue their commitment.

Mr. Riddle asked where Capital One’s 30,000 employees were located. Mr. Mortenson stated that they are scattered nationwide with a large presence in Richmond; some in New York, Louisiana, Texas and some are in Canada and in the United Kingdom.

Mr. Riddle asked if the ING Direct brand would be retained and Mr. Kelley explained that the merger agreement requires that Capital One will cease to refer to the ING Direct brand in approximately one year.

Mr. Biener asked if he saw any constraints in Delaware. Mr. Kelley stated that he did not and added that they had done extensive studies to determine the best location. Mr. Mortenson stated that it is Capital One’s intention to make Delaware a “people center” and have 5,000 employees in this state.

Mrs. Vible stated that ING Direct has been doing a great job in Wilmington. She asked if Capital One is interested in remaining in the City of Wilmington or are there facilities outside the City that would be a better location. Mr. Mortenson stated that Capital One has made a commitment to stay within the City of Wilmington.

Mr. Sears offered his congratulations. He also stated that he just wanted to make sure that the proposed jobs included high paying positions. Don stated that Capital One had submitted information that indicated which types of positions would be created and that many of those positions were professional positions including IT positions. Jim stated that the expectation is that the jobs will be highly skilled, technology based and solid. Director Levin stated that there were tier levels with tier salaries and that DEDO was satisfied with the proposed positions.

Mr. Lubin asked if there were any comments from the public. Mr. Johnson, with the Union, stated that the construction industry is still hurting with 35-40 percent of the

members being out of work. He further stated that he feels this Project will be beneficial to the City.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) the Project will contribute to maintaining or providing gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$10,000, which funds, including the loan proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested loan funds; (iv) the loan will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, Mr. Sears made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Seven Million One Hundred Twenty-Two Thousand Twenty-Four Dollars (\$7,122,024) to be disbursed from the Delaware Strategic Fund for the Project, contingent upon the approval remaining in effect through and including April 22, 2013. Mrs. Vible seconded the motion, which was then adopted by unanimous vote.

**Foxfire Printing and Packaging, Inc. ("Foxfire" or the "Applicant")** – The Applicant is requesting a grant in an amount up to \$336,137 from the Delaware Strategic Fund. The Applicant proposes to use the funds to purchase and install new printing equipment needed in the expansion of its existing business located in Newark, Delaware (the "Project").

**Foxfire Printing and Packaging, Inc. ("Foxfire" or the "Applicant")** - The Applicant is requesting a loan from the Small Business Credit Initiative Loan Program in an amount up to \$1,000,000. The Applicant proposes to use the funds to purchase and install new printing equipment needed in the expansion of its existing business located in Newark, Delaware (the "Project").

Mr. Stone presented this request to the Council. He stated that this company is growing and looking to the State for assistance. He further stated that this expansion will allow them to expand by 38 new jobs. Mr. Stone stated that Foxfire recently purchased a company in Tennessee.

Mr. John Ferretti, CEO and Mr. Fritz Light, CFO presented this request to the Council. Mr. Ferretti stated that Foxfire started 21 years ago. He stated that he moved to Delaware because of its proximity. He stated that Delaware is a great location for distribution and that Foxfire would be serving retail. Mr. Ferretti stated that the company started out in 1991 and that now there is \$45,000,000 in revenue. He stated that 98.8 percent of what the company derived was from outside of Delaware. He stated that Foxfire does the inside signing for stores. He further stated that Foxfire is an ongoing business model not a transactional. Mr. Ferretti stated that Foxfire has in sourced a lot of this work back from China. He further stated that Foxfire has gone from one employee to about 200 full time employees today. Mr. Ferretti added that Foxfire has continued to grow.

Mr. Ferretti stated that they have built a new facility and that \$690,000 of capital improvements will have to go in that building. He stated that the work will be done through local trades. He stated that in 2010 Foxfire closed a manufacturing facility in Maryland and moved to Delaware. Mr. Ferretti stated that in 2011 Foxfire acquired a business in Nashville and that now they have begun to in source that work into Delaware. He stated that they have worked on the software and have contributed to high labor savings for certain companies. He added that Foxfire has acquired the business of Dollar General Stores within the last two years and that Dollar General is going to add 600 new stores this year.

Mr. Riddle indicated that the financials submitted with the application were September 2011 drafts and asked if there were any changes. Mr. Light stated that there were no substantial changes from the financials submitted with the application. He stated that since September, business has been doing well and that the dollar stores have been great for the company.

Mrs. Vible stated that over the years the internet and email have had significant impact on the printing business and asked how Mr. Ferretti saw it affecting Foxfire. Mr. Ferretti stated that because they specialize in large signs, the rise of internet resources for printing does not negatively impact Foxfire. For most businesses, the cost of large printing is prohibitive. Mr. Light stated that the company is flexible and nimble and they pride themselves in being that way.

Mr. Sears asked if most of the staff was in Delaware. Mr. Ferretti stated that approximately 157 out of 200 are in Delaware. He stated that they do have some temporary staff in Tennessee.

Mr. Sears asked if the printing programs provided to clients were reusable and the answer was no.

Mr. Biener asked if Foxfire was finding a good core of people for these jobs. Mr. Ferretti stated that it could be better but they tend to train their employees anyway. He also stated that he did not feel the trade schools were as good as they should be but felt that was a

problem across the country. Mr. Ferretti stated that the State has provided dollars for training which has been a great help.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (I) the Project will contribute to maintaining or providing gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$10,000, which funds, including the loan proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested loan funds; (iv) the loan will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, Representative Scott made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Three Hundred Thirty-Six Thousand One Hundred Thirty-Seven Dollars (\$336,137) to be disbursed from the Delaware Strategic Fund for the Project, contingent upon the approval remaining in effect through and including April 22, 2013. Mr. Biener seconded the motion, which was then adopted by unanimous vote.

After duly considering, Representative Scott made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of this Project under the State Small Business Credit Initiative Program. Mr. Biener seconded the motion, which was then adopted by unanimous vote.

**InterDigital, Inc. ("InterDigital" or the "Applicant")** - The Applicant is requesting a grant in an amount up to \$1,050,000 from the Delaware Strategic Fund. The Applicant proposes to use the funds to establish, outfit and equip a new facility to be located in New Castle, Delaware (the "Project").

Mr. Stone presented this request to the Council. Mr. Brezski stated that InterDigital provides advanced technology that enables wireless communications, and is located in Pennsylvania. InterDigital proposes to move 74 employees to their Delaware operations, which currently involves eight subsidiary companies. Mr. Brezski stated that revenues are derived from 3G and now 4G. He is Vice President, Controller and President.

Mr. Brezski stated that InterDigital was an early pioneer in wireless technology. The company has a number of business models and went public in 1982. Mr. Brezski stated

the majority of employees are engineers and are a highly educated group and make up a highly skilled workforce. He also added that engineers usually come from diverse backgrounds. He stated that they recruit from Silicone Valley, McGill and others from overseas to work for InterDigital. Mr. Brezski stated that InterDigital has twenty attorneys on staff.

InterDigital operates a standardized operation but with a very complex system with multiple OEMs.

Mr. Biener asked about the employees. Mr. Brezski stated that there are currently 150 employees in Pennsylvania and they will be moving at least half of them down to Delaware. He stated that they want to keep engineers in Pennsylvania.

Mr. Lubin asked if there was any resistance from the people that would be moving here. Mr. Brezski stated that the distance for most of these employees is thirty miles which should not be a problem.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) the Project will contribute to maintaining or providing gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$10,000, which funds, including the loan proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested loan funds; (iv) the loan will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, Mr. Biener made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed One Million Fifty Thousand Dollars (\$1,050,000) to be disbursed from the Delaware Strategic Fund for the Project, contingent upon the approval remaining in effect through and including April 22, 2013. Mr. Riddle seconded the motion, which was then adopted by unanimous vote.

**Chase Bank USA, National Association** (“Chase” or the “Applicant”) – The Applicant is requesting a grant in an amount up to \$10,140,000 from the Delaware Strategic Fund. The Applicant proposes to use the funds in the expansion of its current operations in Wilmington, Delaware (the “Project”).

Mr. Biener abstained from the discussion and voting on this Project due to a possible conflict of interest.

Ms. Cannon presented this request to the Council. Director Levin stated that this was a community effort. He stated that Chase has decided to add 1200 new jobs with salaries of \$65,000-\$75,000. Ms. Cannon stated that this Project provides the opportunity to create 600 new jobs this year and projects creating another 600 jobs. She stated that Chase has consistently demonstrated its commitment to Delaware. She further stated that this financial transaction is structured to minimize risk.

Mr. Mel stated that Chase is a very large team with 250,000 members. He stated that Chase has been a stable employer in the State and has had a consistent employment presence. He stated that there are a lot of reasons why people create jobs in a specific place. He stated that in Delaware, Chase has found that it can work very quickly to get things done. He stated that Chase is here because of the support they have received from DEDO, the Governor, Senator Coons, Congressman Carper and Representative Carney. He stated that from a personal point of view, he is very excited to be involved in this Project; creating 1200 jobs makes him very proud.

Mr. Hartwick stated that Chase has a long history with Delaware with 6,000 employees, having five of six business lines here in Delaware. He further stated that Chase has been a stable provider of jobs here in the community. He stated that he has worked on the local level with intern programs for new college graduates.

Mr. Riddle asked what specific jobs are being created. Mr. Mel stated that they are across the board. He stated that half are technical in nature and the other half are nontechnical. He stated that the vast majority are going to be in financial services and trust area of the bank. He stated that they are not just a credit card operation but is also a large trusts operation in the Stanton area. He further elaborated that 250 will be in mortgage related positions. Mr. Lubin asked if any employees will be relocated. Mr. Mel stated that about half of the employees will be relocated and half will be rehires.

Mr. Johnson with the Union asked if there would be any new construction involved in this Project. Mr. Mel stated that if the decision is to lease the facility, they will have to refit the facility. If the decision is to build, that speaks for itself. He stated that they are still in the decision making stage. He further added that the firm is committed to make sure that Chase will hire locally.

Senator Cook emphasized that with the commitment to create jobs by a certain time period, Chase would have to move forward quickly.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory

and regulatory provisions, the Council made the following findings: (i) the Project will contribute to maintaining or providing gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$10,000, which funds, including the loan proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested loan funds; (iv) the loan will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, Mr. Sears made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Ten Million One Hundred Forty Thousand Dollars (\$10,140,000) to be disbursed from the Delaware Strategic Fund for the Project, contingent upon the approval remaining in effect through and including April 22, 2013. Senator Cook seconded the motion, which was then adopted by unanimous vote except for Mr. Biener who abstained from voting due to a possible conflict of interest.

**B. F. Rich Co., Inc. ("B. F. Rich" or the "Applicant")** - The Applicant is requesting a grant in an amount up to \$330,000 from the Delaware Strategic Fund and a loan in an amount up to \$500,000 from the Delaware Strategic Fund. The Applicant proposes to use the funds in the expansion of its current operations located at 322 Ruthar Drive, in Newark, Delaware (the "Project").

Mrs. Clark presented this request to the Council. Mr. Simmons stated that B. F. Rich has been in Delaware for 55 years and at the current location since 1998. He stated that the business peaked at one time with 250 employees. B. F. Rich manufactures vinyl windows and doors and does not sell retail. He stated that they distribute product from New England to South Carolina. Their markets include new construction, remodeling market and light commercial market. Mr. Simmons stated that the company's product line is focused on energy and they have received awards in their efforts. Mr. Simmons stated that B. F. Rich has increased its market share by expanding their products and the territories that they service and they are continuing that process today. Mr. Simmons stated that they anticipate growing their business by expansion and new products.

Mr. Riddle asked about the disbursement amount. Mr. Bach stated that the company actually requested \$986,000 but DEDO is recommending \$330,000 because DEDO bases the amount awarded on PIT.

Mrs. Vible asked if the lesser amount would have an impact on the Project. Mr. Simmons stated that the company feels comfortable that the lesser amount will be adequate. Director Levin stated that there would be a little less breathing room.

Mrs. Vible asked if the jobs were the same type of jobs that they currently have. She asked if the additional jobs would be necessary if the sales don't increase. Mr. Simmons stated that previously B. F. Rich's largest client which was located in New England and that had been in business for over 100 years, went out of business. He stated that this caused an immediate loss of revenue because of that one company but B. F. Rich survived. He stated that B. F. Rich is well diversified and it does not serve one industry. He further stated that B. F. Rich is well diversified and has added product lines and will not let one customer cripple it.

Mr. Simmons stated that he has been with the company 28 years and has seen the company through various challenges such as flood, etc. but they have a great history and a great reputation. He stated that B.F. Rich is poised for growth.

Mrs. Vible asked if the projected \$2,000,000 sales growth for two years is based on the recovery of the housing market or are they hoping to recapture other customers. Mr. Simmons stated that the figure is part of their projections but their plan is to grow the business through hard work and if they get some help from the economy that would be even better.

Mr. Simmons stated that the funds will be used to buy some equipment and also to help with their cash flow. Mrs. Vible asked about the company's relationship with the Bank as it wasn't willing to fund this additional need. She asked if B. F. Rich expects that relationship to continue. Mr. Simmons stated that he had met with the Bank's loan officer recently and the loan officer was very supportive of this Project. He further stated that the Bank was not comfortable in doing the SSBCI loan.

Representative Scott questioned the significant reduction in revenue from 2010 and 2011, and asked what cost measures B. F. Rich had taken. Mr. Simmons stated that during the past year, B. F. Rich had laid off 36-37 employees and that currently there are 109 employees. He stated that since the time of layoffs, they have rehired some employees and have had some cost cutting measures in cutting overhead such as healthcare. He stated that they are currently negotiating healthcare packages which will reduce the company's costs; there will be more employee participation. Mr. Simmons stated that they have reduced their sales staff, and have consolidated management positions to gain efficiency as well as growth. He stated that their efforts were working and they have seen some positive results already.

It was asked if the grant funds could be "secured." Mrs. Johnson stated that a security interest on behalf of DEDA would require a loan, rather than a grant.

Mrs. Vible asked what Mr. Simmons expects to occur when B. F. Rich's covenants are measured this year – what action did he think the bank would take. Mr. Simmons stated that B. F. Rich has an excellent relationship with WSFS and it has agreed to waive covenants as of 2011. Mrs. Vible asked if Mr. Simmons thought B.F. Rich would meet its net worth covenant or debt covenant. Mr. Simmons stated that he wasn't sure but he

didn't believe there would be any problem. He stated that the line of credit is due in June.

Mr. Lubin asked if Mr. Simmons thought they could obtain a written acknowledgement of comfort in terms of B. F. Rich with its lender from a security point of view that it would not trip the covenants and put B.F. Rich in default.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) the Project will contribute to maintaining or providing gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$10,000, which funds, including the loan proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested loan funds; (iv) the loan will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, Senator Cook made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Three Hundred Thirty Thousand Dollars (\$330,000) to be disbursed from the Delaware Strategic Fund for the Project, contingent upon the approval remaining in effect through and including April 22, 2013. Mr. Sears seconded the motion, which was then adopted by unanimous vote.

Mr. Sears asked that the Council be notified if there was any hesitancy or red flags regarding this transaction.

**Regulations** – Mrs. Johnson stated that there were only a few substantive changes made to the Regulations. One of those changes was with the SBIR/STTR section. Mrs. Mears stated that DEDO looked at the policies of Maryland, Pennsylvania, Massachusetts and New York. She stated that DEDO wants to limit the abuse but also wants to offer flexibility. Mr. Smith stated that the federal government is struggling with the same issue.

It was agreed to change the term of “bridge” to “transition”.

Mrs. Johnson stated that the precise reference to fees was changed to reflect that the fees would be reviewed on an annual basis.

It was decided that a final version would be sent to the Council members for review.

**Five Below, Inc.** - It was discussed that Five Below had received a \$250,000 Delaware Strategic Fund convertible loan on June 10, 2010, and has now asked to convert its loan to a grant a year early (the "Request"). The conversion would be based on the number of employees that the company has today. Based upon the conversion calculation, Five Below is asking to convert \$200,000 of the loan to a grant, and pay the remaining \$50,000, plus unpaid interest of about \$10,000. Mrs. Johnson stated that a similar early conversion was approved for TMI recently.

Mrs. Vible made a motion that the Council recommend that the staff of DEDO negotiate the most favorable deal to accommodate Five Below and its request. Mr. Biener seconded the motion which was unanimously adopted.

**Executive Session** - Mr. Sears made a motion that the Council go into executive session to conduct a strategy session, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation, in a matter which, if conducted in an open meeting, would have an adverse effect on the bargaining or litigation position of the Authority or State in accordance with 29 Del. C. §10004(b)(2). The motion was seconded by Mr. Biener which was then adopted by unanimous vote.

Mr. Sears made a motion that the Council go out of executive session. The motion was seconded by Mr. Biener which was then adopted by unanimous vote.

### **ADJOURNMENT**

The meeting adjourned at 11:15 a.m.

Respectfully submitted,

Lee Porter, Secretary

*LKP*

cc: Members of the Council on Development Finance  
Director Alan Levin  
Ann Marie Johnson, Esquire

The next CDF meeting is scheduled for Monday, April 23, 2012 at 9:00 A.M. at Buena Vista in New Castle, Delaware.