

COUNCIL ON DEVELOPMENT FINANCE

March 24, 2014

PUBLIC HEARING 402

THOSE PRESENT:

Mr. Andy Lubin, Chairperson
Senator Brian Bushweller
Cleon Cauley, Esquire
Senator Nancy Cook
Mr. Jack Riddle
Mr. Richard Rowland
Mrs. Richelle Vible

Director Alan Levin
Mrs. Rachael Mears
Mrs. Cassie Porter
Mr. Jimmy Pennewell
Mrs. Lee Porter
Mrs. Jodie Green
Lawrence Lewis, DAG
Mrs. Bernice Whaley
Mr. Tim McLaughlin
Mr. Ken Anderson
Mrs. Melody Booker-Wilkins
Mr. David Archer
Mr. Jeff Stone
Mr. Peter Bothum

ALSO PRESENT: **The Pilot School** – Emilie R. Ninan, Esquire with Ballard Spahr; Mr. John Harrison, Mr. Rod Scott and Ms. Kathy Craven; **Delaware Manufacturing Extension Partnership (DEMEP)** – Mr. Paul Morris and Mr. Rusty Stoopes; **Flow Smart, Inc.** – Mr. Donald Hollenbeck; **JPMorgan Chase Bank, NA** – Mr. Robert Tartaglia, Mr. Don Mell, Mr. Paul Hartwick and Mr. Chip Lee; **Real Entertainment** – Mr. Hal Real and Ms. Angela Vandergrift; **Nanticoke Memorial Hospital, Inc.** – Mr. Steve Rose and Mr. Tom Braum; Mr. Nick Johnson, OMB; Ms. Courtney Stewart, Controller General's Office; Ms. Cheryl Heiks, Cozen O'Connor; Mr. Doug Rainey, *Business Bulletin* and Mr. Aaron Nathens, *News Journal*

LOCATION: Buena Vista, 661 South DuPont Highway, New Castle, Delaware 19720

TIME: 9:00 A.M.

CALL TO ORDER:

The meeting was called to order at 9:00 A.M. by Chairman Lubin, on Monday, March 24, 2014.

OLD BUSINESS:

Mr. Rowland made a motion that the minutes of the February 19, 2014, Council on Development Finance meeting be approved as presented. Mr. Riddle seconded the motion which was then adopted by unanimous vote.

NEW BUSINESS:

The Pilot School Incorporated (“Pilot” and/or the “Applicant”) - The Applicant is requesting approval of the issuance of industrial revenue bonds in an amount not to exceed at any time the maximum aggregate outstanding amount of \$14,000,000. The proceeds of the revenue bonds will be issued in one or more series (collectively, the “Series 2014 Bonds”) and will be applied to make a loan to the Applicant for one or more of the following purposes: (a) financing all or a portion of the costs of construction of a new school facility located at 212 Woodlawn Road, Wilmington, Delaware 19803, serving students ages five through fourteen which will be comprised of an approximately 85,000 square foot building including but not limited to, thirty-two (32) classrooms, special classrooms for art, music, social studies and a science lab, private meeting rooms for counseling, parent education and conferences, other specialized classrooms, a large multi-purpose room, a gymnasium, an in-door pool, and large storage rooms (collectively, the “Project”); and (b) financing various costs incidental to the financing, including costs of issuance. The Project will be owned by the Applicant.

Mr. McLaughlin presented this request to the Council. Mr. McLaughlin stated that the school was established in 1957 and that although it has been well maintained, it has become inefficient. He stated that Pilot plans to build an approximately 85,000 square foot, new school nearby on recently purchased property located at 212 Woodlawn Road in Wilmington, Delaware. Mr. McLaughlin stated that Pilot will contribute \$17,000,000 towards the financing. He stated that with the school’s strength and success, an excellent faculty, it is felt that Pilot is a strong candidate for bond financing. He stated Pilot anticipates increasing its staff by five new members. He added that the bonds will be purchased by Susquehanna Bank.

Mr. McLaughlin stated that Pilot started as an educational experiment which has become an established successful school. He added that there are currently fifty staff members and 150 students, ages five to fourteen that are experiencing language-based learning problems.

Mrs. Ninan, with Ballard Spahr, stated that she is serving as bond counsel. She stated that the financing structure is a direct purchase by Susquehanna Bank. The bonds will not be sold to the public, are not subject to the State’s volume cap and there is no obligation on behalf of the State or The Delaware Economic Development Authority.

Mr. Rowland stated that the financial statements submitted were not signed and he asked if they were a draft or a final version. Mr. Harrison stated that they were in final form.

Mr. Scott stated that Pilot is expecting to receive \$5,000,000 from the buyer at settlement which is hoped to take place in April and anticipates having the other \$5,000,000 over the next couple of years.

Mrs. Craven thanked the Council and staff for their consideration. She stated that this is a very strong, ambitious project. She added that Pilot has never had any debt and their plan going forward seems strong in eliminating this new debt.

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

Motion Made By: Mr. Rowland
Seconded By: Mr. Riddle

MOTION: 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 finding: financing the Project will meet a need for assistance in financing the facilities and activities of the Applicant, as an exempt person within the meaning of 29 Del. C. §5052(8), in order to contribute to the prosperity, health and general welfare of the citizens of Delaware; and further that the Council shall recommend to Mr. Alan B. Levin, Chairperson of The Delaware Economic Development Authority, approval of an amount not to exceed Fourteen Million Dollars (\$14,000,000.00), of revenue bonds, not guaranteed by the State, to be used for the Project; and that such approval will remain in effect through and including March 23, 2014.

Approved by Vote of 7 to 0.

Delaware Manufacturing Extension Partnership (“DEMPEP” or the “Applicant”) –

The Applicant is requesting a Strategic Fund grant in an amount not to exceed \$333,987, which represents \$302,400 to match the amount of federal support from The National Institute of Standards and Technology and an additional \$31,587 to support its operations. The Applicant proposes to use the funds to continue to provide technical and business assistance to Delaware firms through on-site assistance, seminars and workshops from field agents and local technical experts (the “Project”).

Mr. Anderson stated that even with the recent transition, DEMPEP has continued to perform. He stated that DEMPEP continues to serve Delaware manufacturers, State agencies and small business owners.

Mr. Anderson stated that Paul Morris is currently the Interim Executive Director for DEMEP and that Mr. Rustyn Stoores was recently hired as the Deputy Executive Director for DEMEP. He added that Mr. Stoores will be starting with DEMEP this month. Mr. Morris stated that they both are very excited about DEMEP and are anxious to jump in. He stated that the funding from NIST is the basis of the funding.

Mr. Riddle asked about the Board. Mr. Morris stated there is a fiduciary board which consists of Jerry Esposito, Ken Anderson representing DEDO, Mark Brainerd and various other individuals from companies such as ILC and Siemens.

Chairman Lubin inquired about the fiscal 2014 pro formas in comparison to the 2013 operations. He added that it appeared that the budget was very conservative and asked if that was what DEMEP expected or did DEMEP not expect much contract revenue. Mr. Morris stated that DEMEP does expect contract revenue. He added that last year DEMEP was about \$300,000 short and this year they adjusted the budget accordingly. Mr. Morris further commented that DEMEP was on budget for this year.

Director Levin stated that he and Governor Markell have visited several companies throughout the State, and have found that there is no organization that has more impact than DEMEP. He commented that DEMEP has a great group of professionals running their programs. He further stated that DEDO does have some ongoing concern because of the transition but is confident that DEMEP will continue to be successful. He stated the list of DEMEP's current clients was a good sign.

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

Motion Made By: Senator Cook

Seconded By: Mr. Cauley

MOTION: 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) based solely on the information supplied by the Applicant and the representations that it has made, the Applicant is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code") and will use no portion of the Grant funds in an "unrelated trade or business," as defined in Section 513 of the Code; accordingly, the Applicant is an "exempt person" within the meaning of 29 Del. C. § 5052(7); (ii) the Grant and the Project will effectuate the financing of facilities and activities of an exempt person in order to contribute to the prosperity, health or general welfare of the citizens of the State, the Council shall recommend to Mr. Alan Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Three Hundred Thirty-Three Thousand Nine Hundred Eighty-Seven

Dollars (\$333,987) to be disbursed from the Delaware Strategic Fund, for the DEMEP Project and that the approval for the grant remain in effect through and including March 23, 2015.

Approved by Vote of 7 to 0.

Flow Smart, Inc. (“Flow Smart” or the “Applicant”) – The Applicant is requesting an extension on its \$104,900 Strategic Fund Performance grant and its \$92,100 Capital Expenditure grant approved in February 2012. This will allow the entity to finalize its expansion and create new employment opportunities within Seaford, Delaware (the “Project”).

Mr. Riddle informed the Council that he needed to abstain from voting on this project due to a conflict of interest.

Mrs. Booker-Wilkins presented this request to the Council. She stated that Mr. Hollenbeck owns several companies in the Seaford Industrial Park such as Craig Technologies, Flow Smart, Linus Tooling, Craig Ball Sales and Global Diversified Sales.

Mrs. Booker-Wilkins stated that Flow Smart is a high purity polymer products company that has a complete line of sanitary seals. She added that the company produces custom components to solve processing issues for its clients. She also stated that Flow Smart’s products use a pedigree of materials, assuring the finest performance in the food, biotech and pharmaceutical industries. Mrs. Booker-Wilkins stated that in February 2012, the Council recommended a \$104,900 Strategic Fund performance grant based on the creation of fifty-seven full time jobs and a \$92,100 Strategic Fund capital expenditure grant based on capital expenditures in the amount of \$3,070,000 to be made to the Seaford, Delaware site. Mrs. Booker-Wilkins stated that Flow Smart’s renovations took longer than anticipated which delayed the original estimated completion date. She stated that to date, Flow Smart has purchased and renovated 213 Nesbitt Drive in Seaford. This facility supports the warehousing and maintenance for Craig Technologies and is the new manufacturing site for Flow Smart, Inc. She also added that new Class 7 & 8 clean rooms were built to meet standards for food processors, biotech and pharmaceutical customers.

Mrs. Booker-Wilkins stated that DEDO feels it is in the best interest of Flow Smart to extend the approval date for the capital expenditures to May 31, 2014 and to extend the final performance draw date until December 31, 2015. She stressed that these changes do not increase the amounts of the previous approvals.

Mrs. Mears informed the Council that the 2012 statements are not audited, but are reviewed.

Mrs. Vible questioned the grant being to Flow Smart but the jobs being for related companies. Mrs. Mears stated that the positions are global. She added that in terms of

repayment, Flow Smart and all of its affiliates are responsible and that's why all affiliate employees are counted.

Mr. Hollenbeck stated that the building is being shared by both operations and that the costs were spent between the two companies. He stated that Craig is on as much of a growth curb as Flow Smart as both companies serve the same customer base. He informed the Council that all renovations are complete and that this year they will be manufacturing. He stated that the clean house was designed for a new hose room and that one operation required a Class 7 Clean Room and another client's product required a Class 8 Clean Room.

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

Motion Made By: Mrs. Vible
Seconded By: Mr. Rowland
Abstained: Mr. Riddle

MOTION: After duly considering, the previous findings, background and approval of this Project, the Council shall recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval to amend the Applicant's grant documents for its previously approved Delaware Strategic Fund Grant to extend the approval date for the capital expenditures portion to May 31, 2014 and to extend the final performance draw date until December 31, 2015, contingent upon the approval remaining in effect through and including March 23, 2015.

Approved by Vote of 6 to 0.

JPMorgan Chase Bank, NA ("Chase" or the "Applicant") – The Applicant is requesting a Strategic Fund Capital Expenditure grant in an amount not to exceed \$1,500,000 or 3% of up to \$50,000,000 in capital expenditures for costs associated with the expansion of its Delaware workforce (the "Project").

Director Levin presented this request to the Council. He stated that Chase's 10K is indicative of a company that has been in transition and of how JPMorgan Chase has dealt as well as any of the other banks with the regulators. He stated that Chase is an outstanding corporate citizen of Delaware.

Director Levin stated that Chase is seeking a \$1.5 million Strategic Fund performance grant for which it will add an additional 500 employees. He stated that Chase currently has 7,537 people. He added that Chase is one of, if not the largest, financial institutions in Delaware. He stated that \$1.5 million makes up the three percent minimum of \$50,000,000 which is what Chase expects to spend in capital expenditures. The capital expenditures consist of: equipment, fit out, telephones and anything else needed to

accommodate the 500 employees. Director Levin stated that the financial sector represents ten percent of the State's employment base.

Director Levin stated that Chase was before the Council in 2012, at which time Chase committed to hiring 1,200 employees. He added that Chase actually hired 1,237 and with these additional 500 employees, it will be a big plus for Delaware.

Mr. Lee, the Executive Director of JPMorgan Chase & Co.'s Global Incentive and Real Estate Tax Group expressed his thanks to the Council. He stated that Chase is extremely proud of its highly successful operation in Delaware. He stated that Chase has grown to 7,500 employees involved in asset management, consumer and business banking. Mr. Lee stated that Chase plans to make a significant investment in both people and in capital expenditures over the next few years. Chase anticipates investing \$50,000,000 in its facilities in the greater Wilmington and Newark area. He commented that Chase is excited about expanding and building in Delaware.

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

Motion Made By: Mr. Rowland
Seconded By: Mr. Cauley

MOTION: 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 grant proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested grant funds; (iv) the grant 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, the Council shall recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) as a capital expenditures grant, to be disbursed from the

Delaware Strategic Fund for the Project, contingent upon the approval remaining in effect through and including March 23, 2015.

Approved by Vote of 7 to 0.

Real Entertainment Wilmington (“Real Entertainment” or the “Applicant”) – The Applicant is requesting a modification to its Strategic Fund loan and grant previously approved at the May 2011, Council on Development Finance meeting (the “Modification”).

Mr. Archer presented this request to the Council. Mr. Archer stated that Real Entertainment is requesting a modification of its \$250,000 Strategic Fund loan and its \$250,000 Strategic Fund grant received in May 2011. He stated that Real Entertainment is requesting a two-year forbearance of the principal payments on the Strategic Fund loan with a balance of \$236,204.18. He added that Real Entertainment is also requesting to modify the definition of a full-time employee to include employees who work a minimum of twenty hours per week. Mr. Archer stated that Real Entertainment will be required to maintain its current benchmark of forty-three employees and will be required to report fifty positions by December 31, 2015. He added that since securing the original loan from DEDA in 2011, Real Entertainment has been successful in obtaining additional financing to assist with cash flow needs.

Mr. Archer stated that in 2012, Real Entertainment had an operating loss of \$359,000. He added that however, the Philadelphia location had a loss four times as much during its first year of operations.

Mr. Real stated that they are trying to grow the business and expects it to be in a much better position in 2015.

Mr. Rowland asked about the employment. Mr. Real stated that there were forty-three employees as of September 30th. He stated that he has several employees that work part-time hours. Mrs. Vible asked about the salary chart - whether the salaries were for full-time work or part-time work. Mr. Real stated that they have thirty-six employees that make up to \$34,000 a year for working twenty hours a week. Mr. Rowland asked how many part-time employees were there that didn't work the twenty hours. Mr. Real stated that there are about one hundred employees in that category during the holiday season but that during the summer it may be thirty employees. He stated that some of the employees may be working thirty-five hours a week but that the minimum is twenty hours per week.

Director Levin stated that they will not have a problem meeting the fifty full-time employees using the new criteria. He stated that the Queen was an effort to reenergize Market Street. He stated that this was a tool used to bring people to Market Street which has now seen sixty new businesses. He stated that DEDO classifies this as a unique application.

Mr. Cauley asked why the new definition helps more than the old definition. Mr. Real stated that the gross payroll is close to what was projected in the original application. He added that when Real Entertainment applied for the original request, they used all of the hours worked divided by time worked in Delaware. He stated that the reason that it is so different for Real Entertainment is that when they have a very busy time, meaning all hands on board, that doesn't mean that everything is the same for every week; it is more like a catering situation rather than a restaurant that has a seasonal impact.

Senator Cook asked if the Council had ever changed the definition for an employee before. Mrs. Mears stated that to her knowledge, the employment definition had not been changed before. Director Levin stated that this is an example of why each application stands on its own merits. Mr. Lubin added that this particular use is not the common use that comes before the Council; this is a different type of situation.

Mr. Riddle asked what would happen if it was decided to hold firm to the current definition. Director Levin stated that DEDO would look at the full-time equivalents and would take Mr. Real's number of eighty-five part-time employees divided by two for a number of forty-two employees. He added that that would cause Real Entertainment to be in a claw back situation. Mrs. Mears stated that the modification also extends the claw back by three years in order to recoup the State's investment.

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

Motion Made By: Mr. Cauley
Seconded By: Mr. Lubin

MOTION: After duly considering, the previous findings, background and approval of this Project, the Council shall recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval to amend the Applicant's documents for its previously approved Delaware Strategic Fund Loan to approve a two-year forbearance of principal payments on the loan and to modify the Grant Agreement to include employees with a minimum of twenty hours as a full-time equivalent, contingent upon the approval remaining in effect through and including March 23, 2015.

Approved by Vote of 7 to 0.

Nanticoke Memorial Hospital, Inc. ("Nanticoke" or the "Applicant") – The Applicant is requesting a Strategic Fund loan to refinance the existing \$3,030,567.29 loan balance, allow a six-month payment forbearance, and provide \$1,500,000 of additional capital for the construction of a 35,000 square foot medical office building in Seaford, Delaware (the "Project").

Mr. Riddle informed the Council that he needed to abstain from voting on this project due to a conflict of interest.

Mr. Stone presented this request to the Council. He stated that five years ago Nanticoke came before the Council seeking assistance to help it through a difficult time. He added that since that time, Nanticoke has managed its finances extremely well, has grown a satellite facility and is now seeking assistance for an office building which will add employees. He stated that the proposed project is to simply take the money that Nanticoke has paid back and relend it to Nanticoke to help with the financing of a new office building and extending the term to 2020.

Mr. Rose stated that Nanticoke is in a very different place than it was five years ago when it was looking for money to help make payroll. He stated that now, Nanticoke has money in the bank and that this year seems to be better than the previous year. He added that Nanticoke has recruited several physicians and will continue to grow. He stated that Nanticoke is working with the new health plan and that it is important for Nanticoke to be prepared for this new program. He stated that the new facility will allow for the consolidation into one office, will gain efficiencies and that Nanticoke will be recruiting three new doctors.

Mrs. Vible asked about the security lien position. Mrs. Mears stated that there are no other private lenders; it is self-financing leaving DEDO with a first position. Mr. Rose stated that when the nursing home was sold, Nanticoke was required to invest \$1.25 million back into the community. Nanticoke is renovating semi-private rooms into private rooms.

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

Motion Made By: Senator Cook
Seconded By: Mr. Rowland
Abstained: Mr. Riddle

MOTION: After duly considering, the previous findings, background and approval of this Project, the Council shall recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval to amend the Applicant's loan documents to reflect the refinancing of the existing balance of the current Note to include additional monies up to \$1,500,000, issue a six month forbearance on principal payments from March through August 2014, contingent upon a corporate guarantee from the parent entity, NHS and upon the approval remaining in effect through and including March 23, 2015.

Approved by Vote of 6 to 0.

ADJOURNMENT

The meeting adjourned at 10:15 a.m.

Respectfully submitted,

Lee Porter, Secretary

LKP

cc: Members of the Council on Development Finance
Director Alan Levin
Lawrence Lewis, DAG

The next CDF meeting is scheduled for Monday, April 28, 2014 at 9:00 A.M. in Dover.