

## COUNCIL ON DEVELOPMENT FINANCE

February 22, 2010  
PUBLIC HEARING 358

### THOSE PRESENT:

Mr. Andy Lubin, Chairperson  
Steve Biener, Esquire  
Honorable Nancy Cook  
Mr. Tom Gilligan  
Honorable Greg Lavelle  
Mr. Fred Sears

Mr. Alan Levin  
Mr. Gary Smith  
Mr. Stephen Bach  
Ms. Rachael Onorato  
Mrs. Lee Porter  
Mr. Jeff Stone  
Mr. Ken Anderson  
Ann Marie Johnson, Deputy  
Attorney General

**ALSO PRESENT:** Senator David McBride; Representing Projects: **Delaware Small Business Development Center** – Mr. Clinton Tymes and Mrs. Barbara Necarsulmer; **Delaware Manufacturing Extension Partnership** – Mr. Steve Quindlen and Mrs. Kim Rachiele; **Five Below** - Mr. Ken Bull; **Testing Machines, Inc.** – Mr. John L. Sullivan and John Bialecki, Esquire; **Kaolin Mushroom Farms, Inc.** – Mr. John Pia

**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 9:05 A.M. by Mr. Lubin, Chairperson, on Monday, February 22, 2010.

### **OLD BUSINESS:**

Representative Lavelle made a motion that the minutes of the January 25, 2010 Council on Development Finance meeting be approved as presented. Mr. Sears seconded the motion which was then adopted by unanimous vote.

### **NEW BUSINESS:**

**University of Delaware's Delaware Small Business Development Center ("DSBDC" or the "Applicant")** - The Applicant is requesting a grant from the Delaware Strategic Fund program in the amount of \$400,000. The Applicant proposes to use the funds to defray operational costs (primarily salaries/fringe and occupation costs) of running the

statewide SBDC program (the “Project”) which is headquartered at the University of Delaware in Newark, Delaware.

Mr. Anderson presented this request to the Council. Mr. Anderson stated that a lot of positive things have been happening with the DSBDC.

Mr. Tymes stated that the DSBDC will soon be changing its name to the Delaware Small Business Technology Development Center (“DSBTDC”). The University of Delaware recently asked to change the DSBTDC’s reporting relationship and be a part of the newly created Office of Economic Innovation and Partnership. This will allow the DSBTDC to play a major role in the economic development of the State. Mr. Tymes stated that the DSBTDC will be able to leverage the assets internally and externally of the University. He stated they will be able to go out as a team to work with technology businesses. They will be able to assist a researcher or small business from the proof of concept all the way through commercialization.

The DSBDC is required to go through an accreditation every four years – which has to be passed to be able to qualify for funding. Mr. Tymes said the greatest part of this process is the technology component. He stated that the DSBDC was recently reviewed by the Association of Small Business Development Centers. Successful completion of this review process is critical for the DSBDC to retain its \$611,111 in federal funding. Mr. Tymes stated the DSBDC received a document yesterday stating the DSBDC had been accredited. Ms. Necarsulmer stated that every state in the nation has an SBDC but Delaware is only the 7<sup>th</sup> State to receive this accreditation. She also stated that the University of Delaware’s backing was strategically important and this accreditation would not have happened without it.

Mr. Sears asked if the DSBDC had seen an increase in applicants and did the applicants seem more frustrated. Mr. Tymes stated that the bulk of its clients are still traditional businesses. He stated that over the last year they have seen frustration from businesses with financing situations. He stated that he knows there has been help from DEDO with the LIFT program and with the SBA. But he stated that there is a lot of restructuring going on and some is just based on the economy. Mr. Sears stated that he knows sometimes it is an overwhelming process. Mr. Tymes stated that they still see a lot of that but one of their major roles is to connect businesses with the right resources that would help them overcome their obstacles. He stated that even with the DSBDC, they have had to change a number of ways they do things. He stated that with the downturn of the economy, there have been a lot of “startups” so the DSBDC has had to revise its business program to make it a little more of an assessment as to what stage the company was in and what did it really need. He stated they have had to change their ways to adapt to new demands.

Mr. Tymes stated that the DSBDC's numbers are slightly down from the year before. But because of the economy, he stated they are looking at their total health – operations, personalities, etc.

Representative Lavelle asked about the Budget Bill mandating this funding – was this the typical historical funding mechanism. Mr. Smith stated it had been but that it was going to change in the coming year. Mr. Levin stated it wouldn't be an automatic funding. Representative Lavelle asked if the interest earnings were sufficient in the past. Mr. Smith stated that they had not been sufficient.

Mr. 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) 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. 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 Four Hundred Thousand Dollars (\$400,000) to be disbursed from the Delaware Strategic Fund, for the Project, contingent upon the approval for the grant remaining in effect through and including February 21, 2011. Mr. Sears seconded the motion, which was then adopted by unanimous vote.

**Delaware Manufacturing Extension Partnership ("DEMPEP" or the "Applicant")** - The Applicant is requesting a grant in the amount of \$341,200 from the Delaware Strategic Fund program. The Applicant proposes to use the funds to support the DEMPEP which provides technical and business assistance to Delaware firms through on-site assistance, seminars and workshops (the "Project"). DEMPEP is located in Newark, Delaware.

Mr. Anderson presented this request to the Council. He stated that DEMPEP continues to perform to all the required measures. He stated DEDO supported this request.

Mr. Quindlen stated that DEMPEP is growing but the economy is not. He stated DEMPEP is growing in a sense that it is offering different services, process improvements, etc. He stated the whole role is for them to stay in business in Delaware and create jobs. Mr. Quindlen stated that there has been a slight decline in manufacturers in 2009 versus 2008. He stated that they did pick up additional new clients and have met their needs and are growing in what they are doing. He stated they look for second sources of suppliers.

Mr. Quindlen stated that DEMEP has done some good things in the State. He stated DEMEP's partnership with DEDO is very strong. They are trying to put together a manufacturing week in March with the purpose of transferring information with each other.

Mr. Quindlen stated that basically DEMEP has done what it was expected to do and he hopes the return to DEDO is satisfactory. He stated they have been approved from the Federal source of 1/3, they are here requesting the State's 1/3 and then DEMEP will get its 1/3 of the funding.

Mr. Gilligan asked if this was the same amount this year that DEMEP got last year. Mr. Quindlen stated that the amount has descended 5% from last year. He stated DEMEP is doing things that have not been done before. He stated they are customizing the problem solving process.

Mr. Sears asked if there were more clients located up state or down state. He stated most of the clients located up state were in the medical field and most of the clients in the down state area dealt with airplanes. He stated there was a good balance. He stated the bigger projects were located down state. There were also machine shops in the North. Mr. Quindlen stated Delaware has a lot of "cool" businesses.

Director Levin thanked Mr. Quindlen for his assistance with State government in helping to streamline processes. Director Levin stated that Mr. Quindlen has given some very helpful advice. He stated that DEMEP is a big part of some of Delaware's successes.

Mr. Quindlen stated that they have experienced an increase in expenses. The increases are due to new products that DEMEP is offering. DEMEP is looking at energy – trying to have companies sell to China. They are trying to show companies how to be competitive.

Mr. 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) 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, Mr. Sears made a motion that the Council recommend to Mr. Alan Levin, Chairperson,

The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Three Hundred Forty-One Thousand Two Hundred Dollars (\$341,200) 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 February 21, 2011. Mr. Biener seconded the motion, which was then adopted by unanimous vote.

**Five Below, Inc. (“Five Below” or the “Applicant”)** - The Applicant is requesting a convertible loan in the amount of \$250,000 from the Delaware Strategic Fund program. The Applicant proposes to use the proceeds to upgrade and expand its distribution center in New Castle County (the “Project”). The Applicant is an extreme-value retailer serving the teen market.

Mr. Stone presented this request to the Council. He stated that Five Below presented a request to the Council last month. He stated that today, Five Below is requesting the second portion of the Project which is a convertible loan. Mr. Stone stated that nothing has changed in terms of the Project. It is growing rapidly and the company will be adding additional employment. He stated this is just the second piece of the entire project.

Mr. Stone stated that the loan would be converted to a grant if and when Five Below met the 50 permanent full time employee’s criteria. If it doesn’t meet those criteria, it will remain a loan with a prime interest rate, fixed at closing.

Mr. 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 Lavelle made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a loan in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) to be disbursed from the Delaware Strategic Fund, for the Project, contingent upon the loan being converted to a grant if and when Five Below should meet the 50 permanent full time employees criteria and upon the

approval remaining in effect through and including February 21, 2011. Mr. Sears seconded the motion, which was then adopted by unanimous vote.

**Testing Machines, Inc. (“TMI” or the “Applicant”)** - On December 15, 2009 the Council on Development Finance approved a Delaware Strategic Fund loan for TMI in the amount of \$500,000. The Applicant is now requesting that DEDA amend the previously agreed upon lien position (the “Request”).

Mr. Bach stated there was a change in the lien position for TMI and this action requires that the Council be informed. Mr. Bach stated that project itself will remain the same. He stated that the Authority’s loan to TMI has been funded as well as the 504 SBA financing with WSFS. He stated that DEDA will be funding inventory. DEDA will be taking a blanket third lien position on all business assets while keeping the personal guaranty of John Sullivan as well as the corporate guarantee from Lako Tool Mfg, subsidiary of TMI, Inc.

Ms. Johnson, Deputy Attorney General, stated that because the equipment collateral is comprised of constituent parts of the equipment, it is difficult to perfect a purchase money security interest. The loan committee therefore decided to take a blanket third lien position.

Mr. Levin stated that the staff felt comfortable with the personal guarantees and the financial strength of the company

Mr. Sullivan stated that originally he expected four of the current employees to relocate to Delaware. He said that now fourteen have agreed to come to Delaware which include positions for accounts payable and accounts receivables. He also stated that in three cases, the husband is leaving his job to come with his wife to come here. He stated the project is actually a little ahead of schedule. He stated they have moved back the time they are going to move here. He stated they are moving forward in mass consolidation. He said he was very pleased with how things were progressing. He stated everyone in New York is building up inventory so that when the company moves to Delaware and are in transition, TMI will have the goods available. He stated they did incentivize the employees to stay with the company and also had to give them a moving stipend which he expected.

After reviewing the Applicant’s Request, Mr. Sears made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, that The Delaware Economic Development Authority take a blanket third lien position on all business assets while keeping the personal guarantees of John and Patrick Sullivan as well as the corporate guarantee from Lako Tool Mfg. Subsidiary of TMI, Inc. Mr. Gilligan seconded the motion, which was then adopted by unanimous vote.

**Kaolin Mushroom Farms, Inc. (“Kaolin” or the “Applicant”)** - The Applicant is requesting a \$400,000 convertible loan and a \$130,000 grant from the Delaware Strategic Fund program. The Applicant proposes to use the proceeds to upgrade the facility located at 700 Centerpoint Drive, New Castle, Delaware.

Mr. Stone presented this request to the Council. He stated Kaolin is one of the five largest mushroom growers/packers/distributors in the United States. He stated that South Mill is headquartered in Kennett Square, Pennsylvania and employs 800.

He stated that for the relocation of Kaolin’s distribution center, DEDA is offering a three year, 50% convertible loan of \$400,000. The conversion of \$200,000 to a grant will be triggered upon meeting the 179 full-time total employment figures and sustaining that employment level for a period of three years.

Mr. Bach stated that in looking at the financials, the company looks healthy, has good liquidity and he believes it can easily take on this addition debt.

Mr. Pia stated that there is an additional \$130,000 grant to assist with renovations. Mr. Pia stated he appreciates the opportunity the venture has started. He stated Kaolin is about three years late in doing this. He stated they have outgrown the current building and they cannot continue there with the restricted space. He stated that however, the building they are going to is a little bigger than they need, but it is with the anticipation of growth. Mr. Pia stated he has an Agreement of Sale on their present facility. He stated they are trying to continue a leadership role in the industry and they need space to accommodate that. It will be a mushroom packaging facility; they won’t be cooking or canning. Mr. Pia stated that they would be maintaining cold storage facilities. They are actually looking to accommodate produce items with extra space right now.

Mr. Pia stated that the seven facilities they operate around them are growing. He stated that nine years ago they imported from Europe the only indoor mushroom operation in North America. He stated they are trying to bring its farm operation to Delaware.

Mr. Sears stated that he worked with this company awhile back when he worked with Delaware Trust. Mr. Pia stated that his father started this business in 1945; it was a compost production business. He stated in 1982 it was a small business.

Mr. Biener asked if Mr. Pia expected the people to come to Delaware with him. Mr. Pia stated that the more he gets into the project, the more he thinks they will lose some of their people that understand the business. He feels he will probably lose 50 out of 75 employees. It was stated that the bulk of jobs are low paying. Mr. Biener asked if they had benefits and Mr. Pia stated they did.

Mr. 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 loan in an amount not to exceed Four Hundred Thousand Dollars (\$400,000) to be disbursed from the Delaware Strategic Fund, for the Project, contingent upon the loan being converted to a grant if and when Kaolin should meet the 179 full-time total employment figure and sustaining that employment level for a period of three years and upon the approval remaining in effect through and including February 21, 2011. Representative Lavelle seconded the motion, which was then adopted by unanimous vote.

**Delaware Economic Development Office (“DEDO”)** - DEDO is requesting \$100,000 from the Delaware Strategic Fund Brownfields program to be used for the remediation of potential contamination within the existing structures at 785 Dawson Drive in Newark, Delaware which was formerly known as the Syntech property (the “Project”). This will help enable the reuse of the site for a job creating industrial user.

As a result of the default of a general obligation bond issued in 1981, DEDA, by default has become the owner of the Project property located at 785 Dawson Drive in Newark, Delaware. As a result of a chemical explosion and various other situations, there has been ongoing remediation work done at this facility. DNREC has done a lot of work on this property. The building that was previously occupied is still there.

Foxfire Printing, located across the street, has proposed to build a new 70,000 square foot facility on this site. This would allow Foxfire to expand and consolidate its fulfillment and printing operations, both traditional offset and digital. In order for Foxfire to take title before remediation is complete, it must enter into a Brownfield's Development Agreement. If it takes title before remediation is complete and a certification of completion of remedy is issued, it will become a responsible party for any remaining contamination on the site under Delaware law.

DNREC has spent \$1.7 million from the Hazardous Substance Cleanup Act and has budgeted another \$800,000 more just for groundwater remediation. DNREC and DEDO are proposing to enter into a Memorandum of Understanding (“MOU”) to share the responsibility for this determination and, if necessary removal of contaminated materials. This MOU commits DNREC to pay the first \$125,000 of the cost of this assessment. Any expenses to clean out any remaining chemical in the facility above the \$125,000 will be shared equally between DNREC and DEDO up to \$100,000 each. DEDO proposes to use its Brownfield’s funds to provide a 100% match for any expenses up to \$100,000. The maximum expenditure would be limited to \$325,000.

Mr. Sears stated he believes that if DEDO doesn’t do this, no one will.

Mr. Biener asked if there was any issue with DEDO providing money to remediate property owned by DEDA. Ms. Johnson, DAG, indicated that there were no legal impediments to using the funds for this purpose. Once remediated, the property will be exempt from State requirements for surplus property as DEDA is a separate legal entity which has the ability to buy and sell property pursuant to its powers.

Mr. Biener asked if DEDO had a commitment from Foxfire. Mr. Stone stated there was not a formal commitment but until Foxfire is sure that they have no liability going forward, they are not going to enter into an agreement. Mr. Sears stated that he feels this needs to be done as this is a great industrial park. Mr. Stone stated that New Castle County is very supportive.

Representative Lavelle asked if it was anticipated that Foxfire would buy the property from DEDO. Mr. Stone stated that issues relating to that matter were being reviewed and hopefully would be resolved soon.

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

After duly considering, *inter alia*, the nature of the business, that the Project property is a “certified Brownfield” within the meaning of 29 Del. C. §5028(4) and 1 Del. Admin. C. §402-3.0 and 19.0, the Council made the following findings: (i) the Project will contribute to the creation or retention of gainful employment of the citizens of the State, and will reduce pollution of the State’s environment; (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 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, and (v) the Grant will effectuate the purposes of Chapter 50,

Subchapter IV of Title 29 of the Delaware Code. Representative Lavelle 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 Hundred Thousand Dollars (\$100,000) to be disbursed from the Delaware Strategic Fund Brownfields Program, for the Project, contingent upon the approval remaining in effect through and including February 21, 2011. Mr. Gilligan seconded the motion, which was then unanimously approved.

**Project Update:** Ms. Onorato updated the Council on the status of delinquent projects.

**ISOGEN, LLC** – This company received a \$1,500,000 Delaware Strategic Fund loan on July 24, 2008. Ms. Onorato updated the Council on the status of the Isogen loan.

**Platinum Hanger, LLC** – This company received a \$470,490 Delaware Strategic Fund loan on May 28, 2009. Ms. Onorato updated the Council on the status of the Platinum loan.

**Data Management International** – This company received a \$250,000 Delaware Strategic Fund loan on August 25, 2006. Ms. Onorato updated the Council on the status of the Data Management loan.

**Rite Tech Aerospace, LLC** – This company received a \$100,000 Delaware Strategic Fund loan on December 27, 2007. Ms. Onorato updated the Council on the status of the Rite Tech loan.

**Scientific Products & Systems, Inc.** – This company received a \$700,000 Delaware Strategic Fund loan in 2006. Ms. Onorato informed the council that the project is currently in liquidation.

**Sky-Trax Inc.** – This company received a \$50,000 Delaware Strategic Fund loan and a \$50,000 Emerging Technology Based Seed Fund II Loan in April 2007. Mr. Smith informed the Council that due to Sky-Trax' success, DEDA is in the process of converting the Note to securities.

## **ADJOURNMENT**

The meeting adjourned at 10:30 a.m.

Respectfully submitted,

Lee Porter, Secretary

*LKP*

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

The next CDF meeting is scheduled for Monday, March 22, 2010, at 9:00 A.M. at Buena Vista in New Castle, Delaware.