

COUNCIL ON DEVELOPMENT FINANCE

**December 12, 2011
PUBLIC HEARING 378**

THOSE PRESENT:

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

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

ALSO PRESENT: Projects: **Amazon.com.dedc LLC** – Mr. Braden Cox; Mr. Den Branner, Mayor of Middletown, Mr. Lou Vitola and Mr. Morris, Deputy of the Town of Middletown; and Brian Strohl from Duke Realty; **DEMEP** – Mr. Steve Quindlen and Ms. Kim Rachiele, Mr. Allan Coletta, Siemens; and Mr. Brad Walters, ILC; **Quantum Leap** – Bin Yu, Frank Abbott; **Coastal Brewing** – Mr. Jim Lutz and Mr. Randy Slaughter; **ActiveAir, Inc.** – Mr. Bomdad Bahar; Ms. Michele Sloan, Office of Management and Budget; Mr. Benny Johnson, Carpenters LU626; Ms. Kim Monahan, *Middletown Transcript*; Ms. Amy Cherry, WDEL; and Mr. Jeff Montgomery, *The News Journal*.

LOCATION: Smyrna Rest Area, Smyrna, Delaware 19977

TIME: 9:00 A.M.

CALL TO ORDER:

The meeting was called to order at 9:00 A.M. by Chairman Lubin, Chairperson, on Monday, December 12, 2011.

OLD BUSINESS:

Mr. Steve Biener made a motion that the minutes of the October 24, 2011 Council on Development Finance meeting be approved as presented. Mr. Riddle seconded the motion which was then adopted by unanimous vote.

NEW BUSINESS:

Amazon.com.dedc LLC (“Amazon” or the “Applicant”) - The Applicant is requesting a grant from the Delaware Strategic Fund program in the amount of \$3,472,500. The Applicant proposes to use the funds for the construction of a new distribution facility located in Middletown, Delaware (the “Project”).

Mr. Stone presented this request to the Council. Mr. Cox, Director of Public Policy, showed two renderings of the proposed site of a 1,000,000 square-foot fulfillment facility. Mr. Stone stated that employment would be a minimum of 849 new employees. He further stated that Amazon has all approvals in place to begin construction and anticipates the facility being in operation by the fourth quarter of 2012.

Mr. Cox stated that Amazon is extremely happy to build in Middletown, as Amazon has a long history with the State of Delaware. He stated that Amazon’s first location in the State was in New Castle County, which opened in 1997. He stated that Amazon believes that the \$90,000,000 in capital expenditures investment will help serve their customers and that this expansion will allow Amazon to continue its double digit sales growth. He further indicated that Amazon does not anticipate any closure or downsizing of the current Delaware facility. Mr. Cox thanked DEDO for its support.

In response to Mr. Riddle’s inquiry, Mr. Cox stated that the additional \$45,000,000 being spent in capital expenditures was in addition to the \$90,000,000 in building costs.

Mr. Biener asked how the funds would be disbursed. Mr. Stone stated that there will be two payments; the first disbursement upon Amazon’s certification that it has hired a minimum of 425 new full-time permanent employees and the final disbursement would be made upon Amazon’s certification that it has hired the balance of 424 additional, new full time permanent employees and has maintained a total full-time, permanent employee level of 849 for a period of 90 days.

Mayor Branner stated that the Town of Middletown is looking forward to a great partnership with Amazon.

Ms. Vible asked what made Amazon decide to do this project in Delaware. Mr. Cox stated that it was Middletown’s geographical location in the northern section of the State, the superior access to other markets such as Philadelphia and Washington, D.C., the availability of a strong labor supply and the positive business climate in Delaware which were the most persuasive factors.

Mr. Riddle asked where Amazon's east coast centers were located. Mr. Cox stated that besides New Castle, Amazon has locations in Allentown and Carlisle, Pennsylvania. He added that these locations are only 6-8,000 square feet which is much smaller than the Middletown location.

Director Levin stated that when he and Governor Markell visited Amazon in Seattle in July, he noticed an energy and excitement that goes on at the Amazon campus which mirrors Delaware in a lot of ways. He commented that he believes the State has learned a lot by doing business with them. He also stated that in working with the Town of Middletown, he sees that the Town of Middletown has what it takes to move this project forward. Honorable Cook echoed the remarks of Director Levin by stating that she has witnessed that the Town of Middletown always rises to the occasion to get things done.

Chairman Lubin asked if there were any public comments. Mr. Benny Johnson stated that he was in favor of this project which will result in more construction work for Delaware workers.

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, Honorable 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 Million Four Hundred Seventy-Two Thousand Five Hundred (\$3,472,500) to be disbursed from the Delaware Strategic Fund for the Project, contingent upon the approval remaining in effect through and including December 11, 2012. Senator Bushweller seconded the motion, which was then adopted by unanimous vote.

Quantum Leap Innovations ("Quantum" or the "Applicant") - The Applicant is requesting a matching grant from the Delaware Strategic Fund under the Delaware Technical Innovation Program in the amount of \$50,000. Quantum Leap will use the funds to transition from Phase I to Phase II of its U.S. Office of Naval Research project (the "Project"). The Applicant's business is located at 3 Innovation Way in Newark, Delaware 19711.

Ms. Cannon presented this request to the Council. Mr. Abbott stated that Quantum, founded in 1998, was a small business focused on innovation and deploying advanced analytics solutions. He stated the company has experience in governmental and commercial projects. He described the leadership team as being very strong. Mr. Abbott stated that the staff of twelve consists of a highly qualified team which includes four PhDs, three master degrees and one BS degree. He stated that Dr. Ben Yu, who was present at the meeting today, is extremely qualified. Mr. Abbott further stated that Quantum has recently added key people to the Board of Directors who have improved Quantum's ability to grow the business. He added that Quantum's SBIR went to a Phase II and also won an additional award.

Dr. Yu stated that the Navy is very interested in this Project and that it will be very valuable to security control.

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

After duly considering, inter alia, the nature of the business, that the Applicant is a "small business" within the meaning of 29 Del. C. §5035 (b)(3), that the Applicant has won a Phase I award in the Federal SBIR Program, that the Applicant has submitted a proposal for a Phase II SBIR award but has not yet received such award, that the Applicant's principal place of business will be located in the State of Delaware; and that the research to be conducted will benefit the Delaware economy, and other requirements under applicable statutory and regulatory provisions, Representative Scott made a motion that the Council recommend to Mr. Alan Levin, Chairperson of The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Fifty Thousand Dollars (\$50,000) to be disbursed from the Delaware Technical Innovation Program ("DTIP"), to be used for the Project, contingent upon the approval remaining in effect through and including December 11, 2012. Senator Bushweller 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 \$337,400 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 throughout Delaware through on-site assistance, seminars and workshops from on-staff field agents and local technical experts (the "Project"). DEMPEP is located in Newark, Delaware.

Mr. Anderson presented this Project to the Council. He stated that DEMPEP has received assistance from DEDO since 1994. He informed the Council that DEMPEP has met or exceeded all metrics required in last year's DSF Grant. DEDO has increased those metrics for the coming year and he feels confident DEMPEP will exceed those also.

Mr. Quindlen stated that they actively seek out manufacturers to see how DEMPEP can help them grow. He stated that DEMPEP had been advised that through its efforts, 97 jobs had been created and 166 jobs had been retained. He also stated that manufacturing jobs

are down to 9% in the US and there is a definite need for DEMEP to help them grow and remain viable. He stated that 900 manufacturers were evaluated to determine their needs. DEMEP is now trying to fill those needs. He stated that DEMEP has partnered with the Department of State and the SBA and is working with thirty additional companies to enhance more export. He stated DEMEP needs to go in there and help them and look at their processes to help them grow and create jobs.

Senator Bushweller asked how the creation and retention of jobs was measured. Mr. Quindlen stated that all assisted companies complete a survey which provides this information. Mr. Quindlen stated that some of those questions include: "did you increase jobs, if so, how many", and "if you hadn't participated in DEMEP's program, would you have lost those jobs", etc. He stated that some of the companies will only give ball park figures because of confidentiality with competitors. Senator Bushweller stated he would be interested in seeing the specific questions asked on the survey and Mr. Quindlen told him he would send him a copy of that information.

Mr. Riddle asked how many people DEMEP employed and if it used consultants. Mr. Quindlen stated that there are nine DEMEP employees. When there are projects that are not within DEMEP's purview, they bring in a third party and DEMEP has been successful in bringing in the right people.

Mr. Riddle asked about the ownership of the assets of DEMEP. Mr. Quindlen stated that DEMEP has become part of Delaware Technical Community College ("DTCC"). DEMEP employees are now DTCC employees but DEMEP is self sustaining.

Mrs. Vible asked the status of DEMEP's goal for diversification. Mr. Quindlen stated that Mr. Anderson had asked DEMEP to work with the government to become more efficient and DEMEP is doing that, plus it is working with two law firms and is branching out into other areas. He stated that clients are matched with other clients to form working partnerships. He stated they also get clients through referrals.

Chairman Lubin asked how DEMEP assembles its budget. Mr. Quindlen stated that the financials are actually for year end and shows that revenues were below the projected revenues for FY2011, but they had generated less than the anticipated budget, with a profit just under \$30,000. Chairman Lubin asked how they plan to make up those funds. Mr. Quindlen stated that DEMEP is broadening its base and he feels that will bring DEMEP more revenue. He also stated he feels that they can control third party fees.

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) 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, Mrs. Vible 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 Thirty-Seven Thousand Four Hundred Dollars (\$337,400) 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 December 11, 2012. Mr. Biener seconded the motion, which was then adopted by unanimous vote.

Coastal Brewing Company, LLC (“Coastal” or the “Applicant”) – In March 2009, Coastal received a \$500,000 Delaware Strategic Fund loan that required interest-only payments for the first year and principal and interest payments for the following twenty-four months. In May of 2010, the Council approved a nine-month extension of the interest-only payments. In March 2011, the Council again approved extending interest-only payments through December of 2011 with regular principal and interest payments to commence in January 2012. Today, Coastal is requesting a modification in the terms of its Amended Note, which currently requires monthly principal and interest payments in the amount of \$21,545.94 starting on January 1, 2012 through and including December 1, 2014. The request is to allow Coastal to amortize the loan for fifteen years with a balloon payment at the end of the seventh year. The new monthly payment would be \$3,513.34 and the balloon payment would be due on December 1, 2017 in the amount of \$297,452 (the “Request”).

Mr. Bach presented the above request to the Council. He stated that DEDA would earn \$92,573 in interest income under the proposed modification as opposed to \$10,902 with the current terms.

Mr. Lutz stated that when he came on board he wasn’t sure where they were going with the company. However, they decided to pull out of five states in 2011 and concentrate on a 150 mile radius of the Delaware location. He stated that revenue has increased and that Coastal will be profitable. He stated that they did go over the 150 mile radius decision – have shipped two orders or root beer to London. Their rationale was to create a link between Delaware and the Company’s London born founder, Benjamin Fordham. Moreover, they wanted to capitalize on the marketing opportunity posed by the presence of the Olympics in London next year.

Mr. Lutz stated that Coastal projects an increase of twenty-five percent in sales for next year. He stated that they need more sales, marketing and production efforts. He also stated that they have increased their employment base by twenty percent. Mr. Lutz stated that a lot of the problems come from the run down condition of the facility and the equipment when he took over. They have invested about \$80,000 in improvements and

upgrades in the facility, and they plan to do more to get the facility to the standard that they feel it needs to be in.

Mr. Lutz stated that Coastal wants to pay back some principal and is hoping that this loan of fifteen years with a seven year amortization will help tremendously. He stated that Coastal produced fifteen percent more product this year with less labor. He stated they have put in a tasting room, a sampling room, are doing tours for approximately 100-125 people a week, have held events with the Chamber of Commerce and have had a fund raiser with the local library. They have also set up a Brewers Guild with Dogfish.

Mr. Biener asked how many full-time employees Coastal has. Mr. Lutz stated that Coastal currently has twenty-eight full time employees. Mr. Lutz stated that the \$112,000 on the financial statements as "amounts due to affiliate" was for a seed money loan from Bill Muehauser and John Rhodenhouse as a loan from shareholders and investors. He stated there was no term. Mr. Bach stated that he accepted it as a Note that could be called at anytime as it has been on the books for seven-eight years. Director Levin said the real question is whether this could/would be called. He stated that the Authority needs to clarify the terms of the note and that it should be subordinate to DEDA's loan. Chairman Lubin stated that a condition of the CDF approval would be to make this loan subordinate to the DEDA loan.

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

After duly considering, Mr. Biener made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of the Request, contingent upon the outstanding \$112,000 loan from the partners, being subordinated to DEDA, and upon the approval remaining in effect through and including December 11, 2012. Mrs. Vible seconded the motion, which was then adopted by unanimous vote.

ActivAir Inc. ("ActivAir" or the "Applicant") – In April 2011, the Applicant received approval for a \$125,000 Delaware Strategic Fund loan and the assumption of Advance Aerosol's defaulted loans in the amounts of \$1,200,000 and \$175,000. In May 2011, ActivAir received approval to increase the previous loan amount from \$125,000 to \$300,000. The current outstanding debt with DEDA is \$1,675,000. DEDA has a first priority lien blanket position on all assets owned by ActivAir, Inc. and a personal guarantee from Bamdad Bahar for the \$300,000 loan. Today, the Applicant is requesting that DEDA subordinate its first lien position on accounts receivable which are "sold" to Interstate Capital Corporation of New Mexico, (the "Request").

Mrs. Mears presented this request to the Council. She stated that this company has extreme financial issues. She stated, however, that sales are increasing and the company is moving in the right direction. She stated that the December financial numbers look very positive and ActivAir is current with its payments to DEDA.

Mr. Bahar stated that this is actually a good problem to have because it means the company is growing. He stated that he is more concerned about March and May of next year because he explained that as you ramp up, you send out invoices and then you have to wait to get paid. He stated you are fortunate if you get payment in ninety days. He stated that he believes the best thing they can do is factoring.

Mr. Bahar stated that all previous bills owed by Advanced Aerosol have been paid; ActivAir rescued the plant and has made additional capital investments. He stated ActivAir has some major opportunities. They have also created a platform making porous plastic resulting in orders for 56,000,000 nibs (tip of highlighter). Mr. Bahar stated they can do tremendous things going forward, but cash flow is an issue. He stated that they want the opportunity to factor. He stated that he did not realize that the receivables were a part of the collateral when he signed the loan documents. He stated that what ActivAir is offering in exchange is to limit the factoring and leverage it with additional collateral of dollar for dollar to the State.

Mr. Bahar stated that they would like to have an arrangement perhaps with a limit of \$50,000 now with the possibility of increasing to \$100,000 as business grows. He stated that they want to grow their volume of factoring. Mr. Smith stated that DEDO has had one experience of factoring in the past which was with Data Management International and it is still using the factoring process.

Director Levin asked if Mr. Bahar had had any experience in factoring. His response was that he had not. He stated that he would rather not take money from his other businesses for this project and that his concern is not for today but for the future.

Mrs. Vible asked if Mr. Bahar could obtain a line of credit. Mr. Bahar stated that a lot of banks are under scrutiny at this time. Even though M&T is the only bank not under that scrutiny, M&T's decisions are made in Baltimore and it is hard to get a decision from them. Mr. Smith stated that in looking at ActivAir's financials, he doubts that any lending institutions would be willing to offer ActivAir credit.

Mr. Riddle asked how the proceeds of the \$300,000 DSF loan were used. Mr. Bahar stated that it paid unpaid utility and bills, plus the escrow that was required on those accounts. He stated that everything is current now. He stated they do have a line of credit with County Bank which is secured by Mr. Bahar's personal guarantee.

Mr. Bahar stated that .79% is charged by the factoring company for every 7-10 days. Director Levin asked how long Mr. Bahar thought he would need this factoring arrangement and his response was that he was not sure. He stated that he came into a bad situation and is trying to rectify the problems. It was stated that Mr. Bahar looked at this deal as an opportunity and accepted DEDA's terms but that it would be acceptable to allow this factoring arrangement for a year which would give Mr. Bahar flexibility and give DEDA a comfort level. Mrs. Vible asked if the interest rate used by factoring was

contractual or subject to change. Mr. Bahar stated it was contractual. He stated it may change in six months, but you know what you are paying.

Mr. Riddle asked if the Council was considering a time limit and a dollar cap affiliated with the factoring. It was stated that it would be done for a year. Mrs. Vible requested that the Council receive an update before the end of the year period accompanied with projections to a financial package.

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

After duly considering, Mr. Riddle made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of the Request, contingent upon the factoring taking place for a one year time period, upon the submission by ActivAir of a status within six months on the update including projections to the financial package, and upon the approval remaining in effect through and including December 11, 2012. Representative Scott seconded the motion, which was then adopted by unanimous vote.

Delaware Access Program – Mr. Bach informed the Council that another Access loan was processed last week. This brings the total of loans done to 287 with eight different financial institutions. He stated that this program has saved jobs and the loan losses amount to 9.2 percent of the portfolio.

Mr. Bach stated that DEDO is requesting approval to transfer \$200,000 of Delaware Strategic funds to the Master Access Reserve Account (the “Request”). He stated that this amount should carry the program through two fiscal years.

Mrs. Vible asked who underwrote and approved the Access deals. Mr. Bach stated that the banks perform this function. Mrs. Vible asked if DEDO had the opportunity to review that information. Mr. Bach stated that DEDO does not get a credit memo. He added that the State is liable only for the match put into the loan. Mr. Smith stated that this is a well known program with 36 state participants. He also stated that DEDO is hoping to bring in more financial institutions. Mrs. Vible asked if the Access Program could be used towards the Bank’s CRA credits and the answer was that it could not.

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

After duly considering, Mrs. Vible made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of the Request, contingent upon the approval remaining in effect through and including December 11, 2012. Honorable Cook seconded the motion, which was then adopted by unanimous vote.

Executive Session - Representative Scott made a motion that the Council go into executive session to discuss confidential and privileged commercial and financial

information in accordance with 29 Del. C. §10004(b)(2). The motion was seconded by Mrs. Vible which was then adopted by unanimous vote.

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

ADJOURNMENT

The meeting adjourned at 11:05 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, January 23, 2012 at 9:00 A.M. at Buena Vista.