

COUNCIL ON DEVELOPMENT FINANCE

March 26, 2012

PUBLIC HEARING 381

THOSE PRESENT:

Mr. Andy Lubin, Chairperson
Steve Biener, Esquire
Senator Brian Bushweller
Honorable Nancy Cook
Mr. Tom Gilligan

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
Ms. Patty Cannon
Ms. Nikki Lavoie

ALSO PRESENT: Mr. Geoff Sawyer, Governor's Office; Kimberly Reinagel-Nietubicz – Office of Management and Budget; Mr. Paul Sample; Projects: **Hologic, Inc.** – Mr. Larry Ibbetson and Mr. Jack Troast ; **CD Diagnostics, Inc.** – Richard Birkmeyer, PhD; **M&T Bank Corporation** – Mr. Fred Krajacic, Mr. Mark Kumro, Mr. Kent Wissinger and Mr. Bryan Mozek; **Bloom Energy** – Shawn Tucker, Esquire

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 Chairman Lubin, on Monday, March 26, 2012.

OLD BUSINESS:

Mr. Biener made a motion that the minutes of the February 27, 2012 Council on Development Finance meeting be approved as presented. Mr. Gilligan seconded the motion which was then adopted by unanimous vote.

NEW BUSINESS:

Hologic, Inc. (“Hologic” or the “Applicant”) - The Applicant is requesting a grant from the Delaware Strategic Fund in the amount of \$1,111,800. The Applicant proposes to use the funds in the expansion of its current operations located at 600 Technology Drive in Newark, Delaware (the “Project”).

Ms. Cannon presented this request to the Council. Hologic was formerly known as Direct Radiography Corp. She stated that Hologic had been looking for two years for the best location to expand its operation. A decision was made that the existing Delaware facility would be the best option. The current 142 jobs will be retained with the projection of creating 16 – 18 new positions.

Mr. Ibbetson stated that Hologic builds the X-Ray detectors in mammography systems. The systems are built almost entirely in Delaware, with the exception of an overseas operation. The expansion will require a large investment on Hologic’s part, will not create any interruption in the current operations, and will facilitate bringing the overseas operations to Delaware. He stated that Hologic is the leader in the US with these products, has a substantial presence internationally, and that Hologic occupies approximately seventy percent of the market. He added that Hologic is developing a system for China with the product being built here in Delaware and being exported to China.

Mr. Gilligan asked why Hologic chose to do the expansion in Delaware. Mr. Ibbetson stated that Hologic is currently in Delaware and not moving and uprooting the employees is important to Hologic. He further added that Delaware is their first choice for the expansion.

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. Gilligan 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 Eleven Thousand Eight Hundred Dollars (\$1,111,800) to be disbursed from the Delaware

Strategic Fund for the Project, contingent upon the approval remaining in effect through and including March 25, 2013. Senator Bushweller seconded the motion, which was then adopted by unanimous vote.

CD Diagnostics, Inc. (“CD Diagnostics” or the “Applicant”) - The Applicant is requesting a grant from the Delaware Strategic Fund in the amount of \$500,000. The Applicant proposes to use the funds to relocate its existing business currently located in Pennsylvania, to New Castle, Delaware (the “Project”).

Ms. Cannon presented this request to the Council. She stated that Dr. Birkmeyer started Strategic Diagnostics and is now CEO of CD Diagnostics. She stated that the company is currently located on the Lankenau Medical Campus in Pennsylvania, with approximately 150 employees. Ms. Cannon stated that Dr. Birkmeyer served for many years on the State’s Pre-Venture Board. A video was shown which described the process of diagnostic testing for the rapid detection of the cause of joint pain using joint fluid analysis.

Dr. Birkmeyer stated that CD Diagnostics has technology that will help a tremendous amount of people. He stated that the biomarker profiles that they look at can differentiate a whole series of diseases, gout, infection, etc. He further explained that this testing will provide a genetic signature. He explained that a biomarker is used as a diagnostic tool to identify a specific disease. Dr. Birkmeyer stated this will be a simple test but will provide accurate testing. He further added that this very simple device which is currently used in food and plant diagnostics is now used in the medical arena which provides a tremendous market opportunity for CD Diagnostics. Dr. Birkmeyer stated that Strategic Diagnostics grew from 0 to 150 employees in less than five years and he anticipates that same growth curve for CD Diagnostics.

Mr. Biener asked Dr. Birkmeyer if outside counsel had considered questions regarding the patentability of testing. Dr. Birkmeyer indicated that there had been review by one of their large partners, and it had been determined that their patents are very strong.

Mr. Gilligan asked Dr. Birkmeyer to elaborate on the company’s search for equity sources. Dr. Birkmeyer stated that they started with Angel investors raising \$1.5 million very quickly which allowed the company to do a lot of original research. He further added that CD Diagnostics has an orthopedic company that will provide \$12 million and there are some other sources of equity financing such as from a number of specialty firms that have looked at CD Diagnostics. He continued by saying that CD Diagnostics has not decided what money it will or will not be taking. Dr. Birkmeyer stated that CD Diagnostics is looking at acquiring several different things such as LEO labs; there is one in Pennsylvania and one in Maryland.

Mr. Gilligan stated that the application reflected an aspiration for acquiring the building by 2015. Dr. Birkmeyer stated that that was CD Diagnostics’ plan.

In response to Mr. Biener's question regarding the business model, Dr. Birkmeyer stated that CD Diagnostics will be selling and manufacturing the "razor" in its new facility in New Castle County, Delaware. Dr. Birkmeyer stated that he has worked with the State on previous projects and he also lives here and wants to stay in Delaware.

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 Five Hundred Thousand Dollars (\$500,000) to be disbursed from the Delaware Strategic Fund for the Project, contingent upon the approval remaining in effect through and including March 25, 2013. Mr. Biener seconded the motion, which was then adopted by unanimous vote.

M&T Bank Corporation ("M&T" or the "Applicant") – The Applicant is requesting a grant from the Delaware Strategic Fund in the amount of \$627,900. The Applicant proposes to use the funds to renovate its state of the art data center located at 49 Mitchell Street in Millsboro, Delaware (the "Project").

Mrs. Mears presented this request to the Council. She stated that M&T plans to renovate its 330,000 square foot state-of-the-art data center located in Millsboro, Delaware. She also stated that M&T plans to add 45 new jobs to this location which currently employs 451 individuals.

Mr. Krajacic stated that M&T's headquarters are currently in Buffalo, New York. He stated that M&T has been located in Millsboro for the last nine years and houses six different banking operations. He added that M&T has a secondary data center located in Baltimore which they have outgrown. Mr. Krajacic stated that it has been decided that the Millsboro facility is the best location for this expansion. M&T will be making a capital investment of approximately \$21,000,000. Mr. Krajacic stated that this is the

largest investment ever made by M&T. M&T will have a Tier 3 Data Center which will be larger than its center in Buffalo.

Mrs. Mears stated that there will be approximately \$20.93 million in construction costs and that M&T is eligible for a capital expenditure grant for three percent of that amount which is \$627,900. She further added that there will be two disbursements; one in June and one in December. Mrs. Mears reiterated that the additional benefit is that M&T will maintain its 451 jobs and will create 45 new jobs.

Mr. Mozek stated that what this project will do is to put a firmer commitment in the Millsboro facility and in Delaware and provide employment opportunities as an end result.

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. Gilligan 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 Six Hundred Twenty-Seven Thousand Nine Hundred Dollars (\$627,900) to be disbursed from the Delaware Strategic Fund for the Project, contingent upon the approval remaining in effect through and including March 25, 2013. Senator Bushweller seconded the motion, which was then adopted by unanimous vote.

Pursuant to Title 2 of the *Delaware Administrative Code* Section 2311, review and approval of Delaware Department of Transportation long-term lease transaction for property located in New Castle County.

Mr. Lubin recused himself from the discussion and voting on this matter. Mr. Gilligan acted as Chairman for the discussion on this item of the Agenda.

On September 1, 2010, pursuant to 14 DE Reg. 196, the Delaware Department of Transportation (“DelDOT”) promulgated final regulations that would govern long-term leases entered into by DelDOT. These regulations require DelDOT to obtain the evaluation of proposed long-term lease’s economic development benefit to the State. DelDOT is required to first determine a market value rent for the property through a licensed appraiser. Further, once a licensed appraisal is completed, the DelDOT must refer the matter to the Delaware Economic Development Office for its determination of whether the economic development benefits justify the value of the reduced lease.

Director Levin stated that basically whenever there is a long term lease involving DelDOT property, DelDOT regulations require DelDOT to obtain the review by DEDO.

Today’s request is a proposed long-term lease for property owned by DelDOT with an address of 512 E. Chestnut Hill Road in Newark, Delaware (the “Parcel”); the proposed tenant is Diamond State Generation Partners, LLC, an affiliate of Bloom Energy; with the appraised annual market rent of the Parcel at \$13,500 annually with a 5% rent escalation every five years (the “Proposed Lease”). Director Levin stated that Shawn Tucker, Esquire, counsel for Bloom Energy and Mr. Geoff Sawyer, Chief of Staff to Governor Markell, have been involved in this transaction from the beginning. Director Levin referred to the memorandum which the Council members received regarding this matter. He stated that the information was accurate until a few days ago. One of the significant changes was that the rent escalation is actually 5 percent not the 15 percent as stated in the memorandum and that the annual rent is \$13,500 not \$15,000 as stated in the memorandum. He further stated that the \$13,500 is within the value range of the appraised value for rent which is between \$12-15,000. Director Levin also stated that in today’s market, the 5 percent escalator is the norm.

Director Levin stated that there are some minor terms still under negotiation in the lease which will not affect the pricing or evaluation. Director Levin clarified that what is being asked of the Council today is that they approve the terms of the proposed lease as within the appraised value as presented. He further stated that Bloom does need to close on this deal between now and the next Council meeting. Director Levin stated that the terms presented today will be ratified at the Council’s April, 2012 meeting.

Mr. Tucker stated Bloom received some proposed modifications two days ago, for the first time and he has not been able to confirm if these changes will be accepted but can tell the Council that the changes are not material and they will not affect the price. He stated further however, that he did need to discuss the changes with Bloom, his client, and he hopes to finalize this Lease very shortly.

Mr. Sawyer stated that he will work with DelDOT to get the Council a report from DelDOT verifying that this price is within the acceptable range of the appraised value.

Senator Bushweller asked Director Levin to confirm that the rent will be \$13,500 annually and that the rent escalation would be 5 percent every five years and that these

terms are within the terms of the appraisal. Director Levin confirmed that those figures were correct.

Acting Chairman Gilligan 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 Proposed Lease; conditioned upon the receipt of a report from DelDOT verifying that the lease price is within the acceptable range of the appraised value. Senator Cook seconded the motion, which was then adopted by unanimous vote except for Mr. Lubin who abstained from voting.

Mr. Lubin then retook his position as Chairman of the Council.

Delaware Strategic Fund Regulations – Revised draft regulations for the Delaware Strategic Fund were presented to the Council for review.

Mrs. Johnson indicated that she wanted to bring two particular changes to the Council's attention. First, the fee schedule will now be annually reviewed and approved at a public hearing of the Council, and then posted on the DEDO website, rather than codified in the regulations. Second, there was a discussion regarding the SBIR/STTR policy towards limiting the number of grants allowed to a particular company/entity. Mr. Lubin expressed his concern on putting a limitation on the number of grants that a company can receive, because he did not want to discourage entrepreneurial companies from applying. On the other hand, there is the concern of a company taking advantage of the program and the need to provide as much opportunity to as many companies as possible.

Mrs. Johnson also stated that she has tried to incorporate more language relating to FOIA into the regulations. Pursuant to the new DEDO FOIA regulations, applicants must identify confidential proprietary information at the time of the application. Director Levin stated that he is working with the legislature to get a FOIA exemption for DEDO negotiations. He expressed a concern making negotiations public when Delaware is in competition with another state for the same business. Public disclosure can undermine DEDO's efforts by revealing Delaware's offer to competing states.

Mrs. Mears stated that the auditors had expressed their approval of the regulation update and review.

Director Levin suggested that the staff revisit these concerns and present to the Council at the next CDF meeting a redlined, redrafted version of the draft regulations.

ADJOURNMENT

The meeting adjourned at 10:10 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. and will be held at the Smyrna Rest Area in Smyrna, Delaware.

The May CDF meeting is scheduled for Monday, May 21, 2012 at 9:00 A.M. and will be held at Buena Vista.