

## PUBLIC HEARING SCRIPT

<b>DNC 250, Inc. Project</b>
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Public Hearing to be held on November 25, 2013 at 8:30 a.m.,  
at the Empire State Development (ESD) office Conference Room,  
located at 95 Perry Street-5<sup>th</sup> Floor, Buffalo, NY 14203

### ATTENDANCE

See attached list

Members of the General Public

**1. WELCOME:** Call to Order and Identity of Hearing Officer.

Hearing Officer: *Welcome. This public hearing is now open; it is 8:35 a.m. My name is Grant Lesswing. I am a Business Development Officer of the Erie County Industrial Development Agency, and I have been designated by the Agency to be the hearing officer to conduct this public hearing.*

**2. PURPOSE:** Purpose of the Hearing.

Hearing Officer: *We are here to hold the public hearing on the DNC 250, Inc. project. The transcript of this hearing will be reviewed and considered by the Agency in determination of this project. Notice of this hearing appeared in The Buffalo News on Friday, November 15, 2013.*

**3. PROJECT SUMMARY:** Description of Project and Contemplated Agency Benefits.

Hearing Officer: *The proposed project (the "Project") is to be located on an approximately 1.95+/- acre parcel of land located at 250 Delaware Avenue, City of Buffalo, Erie County, New York (the "Land") and consisting of: (i) the appointment of the Company as agent of the Agency to undertake the planning, design, construction, and equipping of and development of a mixed-use facility to include 204,000+/- SF of class "A" office space, and a 152,520+/- SF four-level parking facility to accommodate approximately 380 cars (the "Improvements") and (ii) the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property (the*

*"Equipment," and collectively with the Land, and the Improvements, the "Facility"). The total square footage of the Facility represents a portion of a larger 472,320 SF facility.*

*The proposed financial assistance contemplated by the Agency includes sales and use tax exemption benefits, mortgage recording tax exemption benefits, and real property tax abatements (in compliance with Agency's uniform tax exemption policy).*

**☒ 4. FORMAT OF HEARING: Review rules and manner in which the hearing will proceed.**

Hearing Officer: *All those in attendance are required to register by signing the sign-in sheet at the front of the room; you will not be permitted to speak unless you have registered. If you have a written comment to submit for the record, you may do so. Written comments may also be delivered to the Agency at 95 Perry Street, Suite 403, Buffalo, New York 14203 until the comment period closes on Friday, December 13, 2013. There are no limitations on written comments.*

**☒ 5. PUBLIC COMMENT: Hearing Officer gives the Public an opportunity to speak.**

Hearing Officer: *If anyone is interested in making a comment, please raise your hand, state your name and address; if you are representing a company, please identify the company. I request that speakers keep comments to 5 minutes, and if possible, 3 minutes.*

**The Hearing Officer calls on those who raise their hand.**

My name is Peter Sayadoff and I am the Director of the Capital Markets Group for Uniland Development Company. I wanted to thank you for giving Uniland the opportunity to bring this project before you today. I'd like to take a few moments to just share how this project evolved. Two years ago, Delaware North - one of Buffalo's most successful, homegrown companies - conducted a needs analysis of its growing operations and determined that, in order to keep its World Headquarters in Buffalo, it required five critical components. Those are:

1. Create an impressive, sustainable and efficient office environment for its employees that includes floor plates of at least 28,000 square feet;
2. Provide ready availability of expansion space;
3. Include a hospitality training center and test kitchen to support the International Hospitality Management Division and Food Services group, and provide lodging for trainees, vendors and various business associates who visit Buffalo from diverse locations around the world;
4. Provide adequate adjacent parking; and

5. Supply state-of-the-art conference facilities and meeting space to host business partners and officials from across the U.S. and around the world

Uniland's IDA's request includes standard mortgage and sales tax exemption and PILOT for strictly the office and parking ramp only.

Uniland was the only developer in Buffalo able to meet all of Delaware North's requirements. Uniland believes strongly in the need to keep Delaware North in Buffalo that it purchased a site that no other developer would touch because it contained contaminated soil and groundwater. Even though it is in a prime location - at the corner of Delaware and Chippewa - the site presents such economic challenges that it would take an experienced developer, like Uniland, to transform the site. That is what this project is about - making the vision of a new World Headquarters for Delaware North a reality. This project is also about bringing a new level of economic vitality to a section of the Central Business District that has struggled for years. It is about introducing a greater stream of tax revenue into the City and County. It is about creating new jobs. It is about smart growth.

When Uniland and Delaware North began negotiations on the building, it became clear that the financial incentives that are available to businesses in Western New York - *for exactly this purpose* - would be necessary to bring this project to life. Any incentives that Uniland receives are passed along for the benefit of our clients. If not for the assistance of the IDA, Uniland is unable to offer a competitive rental rate to our prospective tenant. Uniland has taken a risk by purchasing a contaminated site, remediating that site, and designing a structure that meets our client's critical needs. Uniland took a risk, but the community's return on its investment is clear:

- 350 jobs with an average salary of \$97,000 are retained in Buffalo
- 65 new jobs with an average salary of \$70,000 are created by 2017
- 40 new jobs are created for the hotel, retail operations and the parking ramp
- 450-500 construction jobs with an estimated payroll of \$26 million are created
- The property today currently pays \$47,000 a year in City and County taxes; based on the 10-year standard PILOT, the project is estimated to generate \$3.9 million in new tax revenues over that ten year period, that's an average of \$390,000 a year
- Upon expiration of the PILOT, it is expected that the real estate taxes will exceed \$1 million annually
- Sales and bed taxes of \$650,000 a year are estimated and will be paid to the municipality through the hotel and retail components

Uniland is proud to create the infrastructure for much of Western New York's workforce. It's because of the IDA programs, Uniland has been able to provide local operations for GEICO, Citibank, Fidelis, Bank of America, M&T Bank, and Catholic Health. There's many others. Those are the most recent. Those operations have resulted in thousands of new jobs. In the last 10 years, Uniland has developed three-quarters of a billion dollars worth of projects in Erie County; with nearly \$330 million of that in the City of Buffalo. Uniland and Delaware North are now considering investing \$93 million in the City of Buffalo for the 250 Delaware Avenue project. Uniland respectfully asks the ECIDA to approve our application so we may bring this project to life.

Hearing Officer: With that, I'll open it to comments. People that have put an X next to their name, if you'd come up one at a time, sit at the chair and make your comments.

### Hearing Officer calls Sarah Buckley

Hi, I'm Sarah Buckley. I'm the Legislative Political Director for CWA Communication Workers' of America 1168. We represent Kaleida Health Care workers and as an average nurse I pay my taxes. I don't take the paying of those taxes as a message to me that I should move. And I don't think that Delaware North should move from Buffalo or that Uniland should somehow be punished, however, I am against the tax subsidies for this application. I think the fact that there is an assumption that if we ask a business to pay standard taxes, to move down the street or move a new office building when there is already ample office space available, then we are essentially telling them to move out of the City, is a real problem. It should not be assumed that because a business is decent or we are afraid that it will move, that we should not hold high standards for giving away our taxes or our revenues. I appreciate the steps this administration in the ECIDA have taken to improve this process of giving out these incentives, including the local hire policy, but I think that clearly more needs to be done. A Public Hearing held on Monday at 8:30 in the morning is not designed for the public that I'm familiar with. The public I'm familiar with most likely assumes that if revenue is given up, it is not without a money-back guarantee and that it would in some way resemble an industrial development. I also, I feel discouraged and sense a futility in speaking out this morning at all, as I saw an application that the two projects are in fact integrated and will not go forward without the other and since Delaware North's application's already been approved, it feels a little bit futile here. But I do hope that going forward the ECIDA and Western New York can stand to set an example for how taxpayer money and revenue can be used for true economic development here in Buffalo and as a decent private citizen, I promise to stay here and pay my taxes and I hope that other businesses will do the same. Thank you.

### Hearing Officer calls Sarah Maurer

Good morning. I'm Sarah Maurer. I'm a Communications Specialist with the Partnership for the Public Good and I'm here reading this statement on behalf of Sam McGovern and we're also here with the Coalition for Economic Justice. The application of Uniland for ECIDA assistance for its Delaware North Project highlights the need for stricter State laws and stricter Countywide policies for IDA assistance. The Uniland proposal is by no means as egregious as some of the projects routinely approved by the suburban IDAs involving wine stores, doughnut shops, doctors' offices, car dealerships and speculative office space. The project is located in the downtown core and it involves a business that exports services beyond our region. However, it still does not appear to create a net win for local tax payers. Several aspects of the proposal raised concerns. Public assistance should be reserved for job creation or retention that otherwise would not occur. Otherwise the assistance is just gravy, adding to the profit margin of the developer and/or employer without creating any benefit to the public. In this case, there is no real evidence that Delaware North would fail to create new jobs or move jobs elsewhere if Uniland does not receive public assistance. Unfortunately, our flawed economic development system encourages businesses to talk about moving when they apply for assistance or when that assistance is challenged. But more than such talk should be required to pass the but for test. Particularly, when the project is also slated to receive large subsidies from other State programs such as Excelsior and Brownfields. Uniland's application would be stronger if it involved reusing an existing office building. Reuse confers many environmental benefits and helps preserve the architectural character of the City. In addition, subsidizing new office construction is a dubious strategy when vacancy rates are high. The *Buffalo News* recently reported that by January 1st, the vacancy rate for downtown Buffalo office space will be 22%, with a 24.4 vacancy rate for Class A space, in part due to heavily subsidized office projects such as One Canalside, Catholic Avant and HealthNow. It is not a good use of public money to pay for highly profitable companies to move from one office building to another in downtown Buffalo. Delaware North received large subsidies to locate in the Key Tower, where it appears that they have paid no property taxes for the duration of their lease and now they will be heavily subsidized on Chippewa.

When the Chippewa subsidies run out, will they move again, and again ask for subsidies? Projects such as the Uniland proposal impose real costs on the taxpayers, diverting revenue that would otherwise be used to pay for police, fire, public works, schools, etc. Part of the reason for the NFTA's ongoing fiscal crisis and its recent need to raise bus fares is the diversion of mortgage tax revenue through IDA-funded projects. Where should the public be spending its money? Moving residents to jobs and job opportunities via environmental friendly public transit, or moving Delaware North from Main and Chippewa, to Delaware and Chippewa? Thank you for considering these thoughts.

Hearing Officer calls Ellen Kennedy

My name is Ellen Kennedy and I am here to speak against the revised application for public subsidy submitted by Uniland. I am a member of Citizen Action of New York and the Coalition for Economic Justice, organizations which have been working for years to reform IDAs. I opposed the previous application from Uniland, as well as the one from Delaware North, and I continue to believe that public dollars should not be used to subsidize projects of highly profitable companies and of minimal economic impact. I want to be clear that I do not oppose either of these projects, and I believe both Uniland and Delaware North are assets to the WNY community. I also believe they both have sufficient resources to support this project without public subsidies.

It has been argued that Uniland is not asking for anything more than has been provided to other companies. If this is true, then I would argue that the ECIDA has strayed from the original intent of these subsidies. The 1969 Legislation which authorized the IDA, states the following:

“the agency shall have the power to finance such facilities through the issuance of its bonds and notes, when, in the judgment of the agency, such facilities will serve to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing [*these aren't my words, this is the law*] of industrial, manufacturing, warehousing, commercial and research facilities including industrial pollution control facilities, etc., thereby advance the job opportunities, health, general prosperity and economic welfare of the people of this State and improve their prosperity and standard of living...”

And actually, I just noticed in the application under the use of the facility, there's zero square feet for the things that are mentioned here, manufacturing, warehouse, research and development, commercial.

In June of this year the County Executive released a report entitled “Initiatives for a Smart Economy: Erie County Economic Development Strategy.” I would like to quote from the section “Erie County Industrial Development Agency Reform and Enhancement”.

“IDA's were created in New York State to induce job creating and wealth producing activities by private sector companies that would not have otherwise occurred, or would have occurred at a smaller or slower rate. Private companies may be induced, through the use of taxpayer support, to undertake an activity beneficial to the State that they would not otherwise undertake. However, public support cannot and should not go to a company to simply increase its profits. Thus, when a company undertakes a project it would do even without subsidies, it is an improper and perhaps illegal gift for an IDA to provide benefits.” And finally, “A culture has developed in Erie County economic development circles among major developers, commercial real estate brokers and economic development professionals that every project is entitled to a taxpayer

supported benefit simply because a developer or company is undertaking a project. This runs counter to good economic theory, distorts the free market, and weakens an already fragile tax base. Not every project should receive taxpayer support. Such benefits should be reserved for projects that would not otherwise have occurred, have significant job and wealth creating benefits to the community or provide targeted community redevelopment benefits. This culture of entitlement must end.”

I’m quite sure that the ECIDA will approve Uniland’s application, no matter how many people speak against it. Therefore I believe it is time to actively work to reform IDAs, to pass state legislation with stricter eligibility requirements, greater transparency and increased accountability to the people of this community.

Hearing Officer calls Gladys Gifford

Good morning. My name is Gladys Gifford and I’m here representing both the Citizens for Regional Transit and also as a member of Coalition for Economic Justice. I would oppose granting the application for tax incentives as laid out here today. I feel this is a poor use of public monies where you have a company moving from one spot to another within the City of Buffalo. I would remind the group that this includes relief of the mortgage recording tax, which is an essential source of revenue for the Transit Authority, the NFTA. I would suggest that if this is smart growth, then it ought to enhance local opportunities for local benefit and stand on its own without taxpayer support. I especially appeal to the ECIDA to separate out mortgage recording tax from any bundle of incentives that are offered any company in our region. You should be requiring that companies that are seeking tax incentives locate where they are at a transit corridor and therefore they can support the public transit in our area. Thank you very much.

Hearing Officer calls Jennifer Diagostino

Hello, my name is Jennifer Diagostino. I am here today in my capacity as the Executive Director of the Coalition for Economic Justice (CEJ) to comment on Uniland Development’s DNC 250, Inc. proposal for \$3.2 million in sales, mortgage, and property tax breaks currently under consideration by the Erie County Industrial Development Agency (ECIDA).

CEJ is a non-profit based in the City of Buffalo that unites labor, faith, and community-based organizations to win needed policy changes related to equitable economic development, corporate accountability, and workers’ rights at the state and local level. For the past several years, CEJ has co-anchored the state wide Getting Our Money’s worth coalition, a broad-based coalition that advocates for comprehensive reform of our economic development system in New York State.

We believe that the DNC 250, Inc. project does not represent smart public investment. The proposed 12-story building for 250 Delaware Ave. would create 204,000 square feet of additional office space in an already bloated downtown market, and Delaware North would move literally just a few blocks down the street. In addition to the vacant Key Center tower that Delaware North would leave behind, Uniland is still seeking tenants for the remaining half the office space that would be built. Though we understand that it is technically not “abandonment” by ECIDA’s standards because this relocation would take place after the expiration of Delaware North’s current lease, this strategy is nevertheless a poor investment of our public dollars. We are effectively creating more space without any prospect for

filling it. We should not be in the business of giving incentives to simply reshuffle existing jobs in the downtown corridor from one office building to the next. Public subsidies should only be used for projects that will create real economic growth for our region.

Beyond the failings of the project itself, ECIDA's process for public participation is flawed and lacks transparency. The community does not receive ample notice of hearings to provide meaningful public comment, and detailed information regarding subsidy requests is frequently not available until the last minute. In addition, hearings are often held at times that are difficult for most people to attend, and apparently many of the ECIDA Board Members too. Meetings of the ECIDA Board of Directors and Policy Committee are "open to the public," but the community is not able to speak or pose questions. With the two complementary proposals regarding 250 Delaware Ave. in particular, the time, date, and location of public hearings and other meetings were changed multiple times, making it difficult for concerned residents to stay informed about their progress.

Further, we believe that the recent unanimous approval of subsidies for Delaware North, signal that the ECIDA Board has already made their decision about the future of 250 Delaware Ave. It is difficult for the public to trust that our concerns about Uniland's DNC 250, Inc. proposal will be taken seriously during the current open comment period when the anchor tenant was given the green light on their occupancy before the building has been approved for the subsidy that is allegedly needed to move forward with its construction.

At the November 15th meeting of the ECIDA Policy Committee, one committee member posed a question in reference to said recently approved Delaware North proposal related to the one we are here to discuss today. She asked why we should punish a company just for being successful by not giving them the subsidies they request. Although the public was not permitted to comment at that meeting, I would like to take this opportunity to respond to her question.

Taxes are not a punishment. Taxes are a responsibility we all share as part of the social contract of living in a civil society. Taxes pay for the schools that educate our workforce. They pay the salaries of the inspectors who ensure our buildings are safe. Taxes pay for the maintenance of roads, bridges, and public transportation that get us where we need to go. It is not a punishment to ask companies to contribute to the very system that makes it possible for their businesses to function.

Our sprawling economic development system allows too many opportunities for Uniland and others like them to dodge the taxes they ought to be paying. The rules permit developers and their prospective tenants to submit dual proposals for the same project. That is the case in this situation, where the ECIDA has already granted Delaware North \$807,000 in sales tax breaks for the office space that will be occupying floors in the building that Uniland is now asking us to further subsidize. In addition, overlapping development programs like the ECIDA and Brownfield Cleanup Program allow the same company to double-dip and receive multiple incentives for a single project.

When we allow wealthy corporations to abdicate their responsibilities through this abuse of New York's tangled network of subsidy programs, our entire region suffers. Uniland is the latest in a long line of developers who want ordinary taxpayers to foot the bill rather than paying their fair share. This puts public education, public transportation, and other vital public services at even more risk. The DNC 250, Inc. project highlights the need for significant reform to our economic development system. CEJ and our statewide coalition partners again call for sensible reforms that increase transparency, accountability, and performance metrics to ensure subsidies are smarter investments that revitalize the economy and strengthen communities.

As the ECIDA Board of Directors considers subsidies for the DNC 250, Inc. proposal and other projects in the future, I strongly encourage you to think about from which projects we will best get our money's worth for a more reasonable amount of public investment so we can create good paying, permanent jobs that will truly grow our regional economy. Thank you.

Hearing Officer calls Lynda Stephens

First, I'd like to apologize for disrupting some of the folks by arriving late, I ended up at Tyson Food on Perry Street though. My name as he said is Lynda Stephens. Thank you for providing this opportunity to comment today.

As a City of Buffalo resident, I am especially pleased such an impressive project is proposed for downtown. I think we're all excited about the Buffalo Renaissance - some might say Phoenix. There was never a doubt in my mind this would occur. It was a matter of when, not if.

My concerns, speaking as a member of CEJ's WNY Subsidy Action Committee are somewhat general and they are these:

1. I would like the ECIDA to prioritize subsidized economic developments using job creation criteria. I think we've gotten past retention of jobs scenarios. The reputation of Greater Buffalo is growing as a wonderful place to work and live. Creating more good paying jobs should be the number one priority when considering economic development subsidies. It is important for Uniland to create permanent jobs at their 250 Delaware Avenue project.

2. At the recent ECIDA Policy Committee meeting, held at Burchfield Penney, I was impressed with Delaware North's projection of 65 new, good paying jobs at the new headquarters with a clawback clause. It is important to have a formal agreement for a clawback as part of the deal. Therefore, it is also important for the Uniland project agreement to include, if it is approved, to include a similar clawback agreement for their permanent jobs.

3. Improving transparency with outcomes reporting and creating more opportunities for the general public to participate in discussions about the business subsidy programs is important. It seems the ECIDA is taking some steps in this direction, but they are baby steps. Please make larger efforts to publicize hearings, expand accountability reporting and engage the public.

In closing, I'd like to share my observations about corporate behavior regarding profits. In the mid-1970s I was an MBA student at UB's School of Management. The professors taught us the appropriate business strategy was to "optimize profits", not to "maximize profits." Sadly, we have realized the damaging effects of corporate behaviors that maximize profits. The Great Recession is a key example. Uniland and Delaware North are corporations that give back to our community through various philanthropic endeavors. This has not always been the case for corporate subsidy recipients. In the future you might apply a defined "public good" aspect for subsidy projects in addition to creation of new jobs. "Public good" facilitates economic development at the same time allowing corporations to optimize their profits. Thank you.

**6. ADJOURNMENT.**

Seeing that there are no other public comments, the Hearing Officer closed the public hearing at 9:06 a.m.





