

Rhode Island Economic Development Corporation

Enterprise Zone Council

Minutes of Meeting of September 28, 2010

RIEDC: Providence Room

315 Iron Horse Way, Suite 101

Providence, RI 02908

In attendance:

COUNCIL AFFILIATION

D. Varin Vice Chairman

R. Caniglia Stand Corporation

B. Parsons RIEDC

M. Wood RI League of Cities and Towns

OTHER AFFILIATION

V. Barros RIEDC

A. Crisman Mt. Hope EZ

W. Clark Portsmouth

S. Bowles West Warwick

M. Godin NEEDS, Inc.

J. Garrahy Moses & Afonso, LTD

K. Cosentino City of Providence

E. Perry RIEDC

B. McKenna Dept. of Administration

At 10:07 Mr. Varin called the meeting the Rhode Island Enterprise Zone Council to order and noting that there was a quorum present.

The first of business before the Council were Minutes from the July 27, 2010 meeting.

Mr. Varin asked for a motion to approved the minutes. Mr. Parsons made the motion, which was seconded by Mr. Caniglia.

Mr. Varin asked if there was any further discussion of the motion. There being none all voted in favor, the motion was approved unanimously.

The next order of business before the Council was 2010 Recommendations for Membership.

Mr. Barros stated that there were eight (8) businesses being presented for membership and that all applications for membership were reviewed by the appropriate local municipality and EDC staff; as a result of those reviews, staff recommended approval of all eight (8) businesses bring the year-to-date total to thirty-four (34) new EZ member businesses for 2010.

Mr. Parsons made a motion to approve the 2010 recommendations for

membership. The motion was seconded by Mr. Wood. Mr. Varin asked if there were any additional comments or questions.

There being no further discussion, all voted in favor and the motion was unanimously approved.

The next order of business before the Council was 2009 Recommendations for Certification.

Mr. Varin directed the Council's attention to a revised report that was distributed at the meeting and noted that there were no substantive changes to the original report distributed in the agenda packages. Mr. Barros stated that the changes were cosmetic in nature, minor corrections, typographic errors and the like. He stated that all of the businesses presented had satisfied the requirements for 2009 year-end tax certification; as a result, staff recommended approval of all twelve (12) businesses bring the year-to-date total to fifty-nine (59) businesses approved for 2009 tax certification resulting in four hundred and nine (409) new full-time jobs created in 2009.

Mr. Varin asked for a motion to approve the 2009 recommendations for certification. Mr. Wood made the motion which was seconded by Mr. Caniglia. Mr. Varin asked if there was any further discussion. There being no further discussion, all voted in favor and the motion was unanimously approved.

The next order of business before the Council was an Request for 2008 Certification by The Hotel Providence Employment LLC.

Mr. Barros explained that The Hotel Providence Employment LLC had submitted all of its paperwork for 2008 in a timely fashion during the specified timetable in 2009 except for a letter of good standing from the city of Providence. As a result their 2008 certification request was delayed until now because the company had reached an impasse with the city of Providence on the issuance of a letter of good standing.

The issue centered on the city claim that since The Hotel Providence Employment LLC had no physical assets, it could not be issued a letter of good standing. This resulted in a protracted back and forth between the business and the city which resulted in the intervention of attorneys to resolve the matter. The city generated a certificate of good standing on September 13, 2010 for The Hotel Providence Employment LLC. Making them eligible and in compliance for 2008 EZ tax certification.

Mr. Garrahy stated that this was not an unusual business structure, that many times a business will set up an operating company and a separate real estate company, many times the operating company will have some physical assets but in this case The Hotel Providence Employment LLC did not have any assets so the city did not have anything to tax therefore had difficulty issuing a letter of good standing.

Ms. Cosentino added that the business has a multiple corporate entities and that the employment LLC houses all the employees of the hotel and restaurant and operating entities have all the assets. In the past the city had issued a tax ID with zero assets in order to issue a certificate of good standing for EZ program, but with changes in staffing and procedures, they could not link the businesses tax accounts for the separate entities so they were concerned about issuing a certificate of good standing for the one entity when the others could be tax delinquent.

Mr. Parsons made the motion to approve the request as presented, The motion was seconded by Mr. Caniglia. Mr. Varin asked if there was any further discussion. There being no further questions, all voted unanimously in favor of the motion.

The next order of business before the Council was an Request for 2006 Carry Forward by AAP, Inc.

Mr. Barros explained the AAP, Inc., is a business that was enrolled in the EZ Program up until the Federal Enterprise Community designation (FEC) in Providence expired on December 31, 2004.

At issue are tax credits earned by the business while they were a qualified EZ member business, tax credits earned in 2003, 2004 and 2005, and sought to be carried forward for tax year 2006.

All companies impacted by the expiration of the FEC were notified that they would not be considered active members in the EZ program and ineligible to receive tax credits for EZ job creation after 12/31/10. The question as to whether businesses impacted by the expiration would be able to carry-forward prior year's tax credits was not addressed until June 14, 2005 in a memo to the Council from legal counsel, Thomas Madden, which clearly stated that carry forwards could be awarded to businesses in the expired FEC as long as they met the requirements outlined in the law for carry forward authorization.

He continued by stating that AAP, Inc., utilized a carry forward of existing tax credits in 2005 and again in 2006 without requesting or obtaining Council authorization. It appears that the company's 2005 carry forward was accepted by the RI Division of Taxation, however, after a review by taxation, the company's 2006 carry forward utilization was bounced back because it did not have a letter of authorization from the Council.

It seems clear to staff that the company acted in good faith and was not trying to circumvent the Council when it sought to utilize the carry forward in 2005 and 2006. It is staff's contention that the company was not aware of the procedure for carry forward authorization at the time they sought to utilize the carry forward in 2005 and 2006.

The company is asking for a carry forward letter of authorization from the Council in order to use the last portion of prior year's EZ tax credits applied toward their 2006 RI tax returns. Staff has verified that the employment benchmark has increased during the specific timeframe being measured and considered, and that all letters of good standing have been secured by the company in accordance with the rules of carry forward authorization.

Mr. Varin stated that this really started with the fact that the federal designation didn't match geographically with the existing boundaries of the state enterprise zones.

Mr. Barros added that the law was amended to reflect that any company physical located in the FEC would be eligible for benefits under the state enterprise zone program, it did not change the boundaries at all, just extended benefit to those FEC businesses.

Mr. Parsons asked what the company did?

Mr. Barros stated that the company is Action Auto Parts, a retail supplier of auto parts and accessories.

Mr. Wood stated that this company chose its own path to take the tax credit carry forward rather than work through the Council. The only reason that they are before the Council is because taxation

disallowed the carry forward.

Mr. Barros agreed in principal but added that he didn't feel that they did so purposely, more so due to lack of information.

Mr. Wood asked how the carry forward issue will affect companies impacted by the change to the RI personal income tax provisions that was discussed at the last meeting.

Mr. Garrahy responded by saying that it was his understanding that the affected business entities (all businesses other than c-corporations) would be ineligible to carry forward credits after 12/31/10.

A discussion ensued about the process for tax credit authorization as it related to the Council and the Rhode Island Division of Taxation.

Mr. Caniglia made the motion to approve the request as presented, The motion was seconded by Mr. Parsons. Mr. Wood voted against the motion. Mr. Varin asked if there was any further discussion. There being no further questions, the motion passed 3-1.

The next order of business before the Council was Other Business

Ms. Godin asked what information should we be requesting from companies seeking membership to validate that they are c-corps and

eligible for tax credits in 2011?

Mr. Garrahy stated that as a LLC a business elects to be treated as a corporation or partnership with the Secretary of State. Corporations elect to be treated as an s-corp. through a filing the IRS.

Ms. Godin suggested that we amend the terms and conditions to reflect that a business must be a c-corporation in order to be eligible.

Mr. Wood expressed his concern over the fact that the Council could face challenges from companies who change their corporate status and seek prior year's tax credits and carry forward tax credit. He stated that we need to look at that closely, companies manipulating things around in order to take advantage of the tax credit. We need to get in front of this and act proactively.

Mr. Caniglia echoed Mr. Woods and asked should we be doing something collectively before the end of the year so that our paperwork is in order and he supports the Council sending out accurate information to the business that doesn't add more confusion to the situation.

Mr. Garrahy suggested that he could look at adopting some rules that address the new legislation and that the Council could adopted as of January 1, 2011.

Mr. Caniglia asked if Mr. Garrahy could connect with taxation to make sure all bases are covered on this issue.

Mr. Garrahy agreed to do so.

Mr. Varin directed the Council's attention to the two (2) newspaper articles in the ProJo and PBN, respectively.

A general discussion ensued about the article focusing on the fact that in the EZ program there is clear and definable job creation that is measurable, unlike some of the other tax credits mentioned like the motion picture tax credit but that neither article mentioned this fact.

Mr. Wood suggested that with new legislators and a new governor it may be a good time to share the results of the program over the past five years. Maybe in the form of a letter to the new legislators, informing them of the program's record and job results.

Mr. Varin asked for a motion to adjourn. Mr. Parsons made the motion. The motion was seconded by Mr. Wood. Mr. Varin asked if there was any further business to come before the Council. There being none, all voted unanimously in favor of the motion.