

**Minutes of the Board of Directors Meeting
of
Buffalo Urban Development Corporation**

**95 Perry Street
Buffalo, New York 14203
August 29, 2017
12:00 p.m.**

1.0 Call to Order

Directors Present:

Thomas Beauford, Jr.
James W. Comerford
Janique S. Curry
Dennis W. Elsenbeck
Darby Fishkin
Dottie Gallagher-Cohen
Thomas R. Hersey, Jr.
Thomas A. Kucharski
Brendan R. Mehaffy
Kimberley A. Minkel
David J. Nasca
Dennis M. Penman (Vice Chair)
Craig A. Slater
Steven J. Stepniak
Maria R. Whyte

Directors Absent:

Hon. Byron W. Brown (Chair)
Christopher J. Schoepflin
Darius G. Pridgen

Officers Present:

Peter M. Cammarata, President
David A. Stebbins, Executive Vice President
Brandye Merriweather, Vice President
Mollie M. Profic, Treasurer
Bradley Bach, Assistant Treasurer

Others Present: Dawn Boudreau, ECIDA; James Fink, *Buffalo Business First*; Terry LaConte, Gilbane Building Company; Antonio Parker, BUDC intern; Roger L. Ross, Esq., Hurwitz & Fine, P.C.; and Brett Stiehler, Gilbane Building Company.

Roll Call – Mr. Ross called the roll of directors at 12:12 p.m. and a quorum was determined to be present. Ms. Curry joined the meeting during the presentation of item 4.1.

2.0 Presentation of the Minutes – The minutes of the July 25, 2017 meeting of the Board of Directors were presented. Mr. Stepniak made a motion to approve the meeting minutes. The motion was seconded by Mr. Comerford and unanimously carried.

3.0 Monthly Financial Reports – Ms. Profic presented the BUDC monthly financial report for the period ending July 31, 2017. The unrestricted cash balance at the end of the period was \$15,720,288 and the net position at the end of the period was \$18,102,983. Year-to-date revenue was \$3,094,882 and year-to-date expenses were \$1,629,298, resulting in year-to-date net income of \$1,465,585. Ms. Profic then reviewed the balance sheet and income statement for 683 Northland LLC for the period

ending July 31, 2017. Mr. Slater made a motion to accept the financial reports. The motion was seconded by Mr. Kucharski and unanimously carried.

4.0 New Business

- 4.1 683 Northland – ECIDA Incentives and Inducement Fee** – Mr. Stebbins presented his August 29, 2017 memorandum regarding 683 Northland LLC's application to the Erie County Industrial Development Agency (ECIDA) for exemptions from sales tax, mortgage recording tax and real property tax abatement and a payment in lieu of taxes agreement (PILOT) for the 683 Northland/Workforce Training Center project. In order to facilitate eligibility for historic preservation and Brownfield Cleanup Program tax credits for the 683 Northland/Workforce Training Center project, it was necessary to organize BUDC's subsidiary company (683 Northland LLC) as a for-profit entity which is subject to taxation, including sales and real property taxes. On May 24, 2017, ECIDA adopted an inducement resolution in connection with 683 Northland LLC's application for the above-described exemptions. The inducement offered by ECIDA will provide approximately \$2,316,356 in sales tax savings, up to \$250,000 in mortgage recording tax savings, and \$2,482,000 in real property tax savings. Mr. Stebbins pointed out that ECIDA inducements are subject to an administrative fee equal to 1.25% of the hard construction costs of the project. The estimated hard construction costs for 683 Northland/Workforce Training Center Phase I is \$40,482,326. Based on that estimate, the administrative fee owed to the ECIDA is \$506,030. Mr. Stebbins also explained that ECIDA has agreed to allow payment of the administrative fee in seven equal installments of \$72,290 each. ECIDA has also agreed to allow 683 Northland LLC to suspend the final two (2) years of the administrative fee payments should the project convert to not-for-profit ownership at that time. Therefore, 683 Northland LLC's minimum liability for this administrative fee is \$361,450. Mr. Stebbins noted that this item was reviewed by the Audit & Finance Committee at its August 18, 2017 meeting, and that the Committee is recommending acceptance of the ECIDA inducement, including payment of the administrative fee in accordance with the Administrative Fee Agreement.

Upon motion made by Mr. Nasca, seconded by Ms. Fishkin and carried with fourteen affirmative votes (14-0-1), it was resolved, that BUDC authorizes 683 Northland LLC to accept the inducement offer from ECIDA as described in the ECIDA inducement resolution dated May 24, 2017, authorizes the President or Executive Vice President to execute the Administrative Fee Agreement on behalf of 683 Northland LLC with annual payments of \$72,290, a minimum total of \$361,450 and a maximum total fee of \$506,030, and further authorizes the President or the Executive Vice President to execute and deliver such other agreements and documents and take such actions as may be reasonably necessary or appropriate on behalf of BUDC and/or 683 Northland LLC in connection with the acceptance of and receipt by 683 Northland LLC of ECIDA incentives for the 683 Northland Avenue WNY Workforce Training Center Project. Ms. Gallagher-Cohen abstained from the vote as she is a member of the ECIDA Board.

- 4.2 683 Northland – New Market Tax Credits Consultants Expanded Scope** – Mr. Cammarata presented his August 29, 2017 memorandum regarding the proposed expansion of services for RubinBrown LLP and Cannon Heyman & Weiss LLP to provide accounting services and legal work, respectively, in connection with New Markets Tax Credits for the financing of the construction and development of 683 Northland Avenue and the WNY Workforce Training Center. In response to a July 2016 request for proposals for legal and accounting services to assist BUDC in qualifying for a variety of tax credits, including Historic Preservation and Brownfield Cleanup Program tax credits, the Board of Directors had previously awarded the tax credits consulting work to a team comprised of Cannon Heyman & Weiss LLP, RubinBrown LLP and Freed Maxick to cover the team's initial scope of services related to Historic Rehabilitation tax credits and Brownfield Cleanup Program tax credits. It was unclear at the time of the RFP whether New Markets Tax Credits were a viable option for the project. Mr. Cammarata reported that since that time, the project has been offered and has accepted New Markets Tax Credits

allocations of \$15,000,000 which will result in estimated net cash to the project of approximately \$4.7 million. Mr. Cammarata pointed out that NMTC financing is extremely complex and, in this case, will involve multiple investors and allocatees. The additional legal and accounting work necessary for the NMTC transaction is beyond the initial scope of services for RubinBrown and Cannon Heyman & Weiss. BUDC staff requested letter proposals from both consultants to expand the scope of services to include the work necessary for the NMTC transaction. RubinBrown's proposal estimated additional accounting costs of \$32,500. The proposal for Cannon Heyman & Weiss estimated the range of additional costs for legal services from \$75,000 to \$100,000. Mr. Cammarata noted that these costs would be paid as part of the overall transaction costs and would not reduce the estimated net cash to the project that will be generated as a result of the transaction. Given the unique knowledge and expertise possessed by the consulting team relating to the overall tax credits transaction, the duplication of services that would result from adding a separate set of consultants for the NMTC transaction and the very short timeframe available to close on the financing, executive staff determined that a separate RFP for NMTC services was not a viable option and would endanger a time-sensitive economic development opportunity. Since the BUDC procurement policy provides that alternate proposals or quotes are not required if the delay by obtaining alternative proposals or quotes would endanger a time-sensitive economic development opportunity, BUDC staff is recommending acceptance of both proposals from RubinBrown and Cannon Heyman & Weiss to amend and expand their respective scope of services to include the work necessary for the NMTC transaction. Mr. Cammarata noted that the Audit & Finance Committee reviewed and is recommending approval of the expansion of the scope of services for both consultants. In the ensuing discussion, Mr. Slater reported that from his experience, NMTC transactions are exceptionally complex and he expressed his agreement with the recommendation. Mr. Mehaffy noted that the Real Estate Committee at its August 22, 2017 meeting concluded that the added cost of the duplication of services resulting from a separate set of consultants for the NMTC transaction outweighed any potential savings which could be realized from a separate request for proposals for NMTC services. Mr. Mehaffy indicated that the Real Estate Committee recommended approval of the requested expansion of the scope of services for both consultants.

Mr. Slater made a motion to approve the expansion of the scope of services for RubinBrown and Cannon Heyman & Weiss to include the accounting and legal work necessary for the New Markets Tax Credits financing offered to BUDC and 683 Northland LLC at an estimated total cost of between \$107,500 and \$132,500 and to authorize the President or the Executive Vice President to execute and deliver such agreements and documents and to take such actions as may be reasonably necessary or appropriate to implement this action. The motion was seconded by Ms. Minkel and was unanimously carried.

- 4.3 683 Northland – Gilbane Subcontractor Work** – Mr. Stebbins presented his August 29, 2017 memorandum concerning the early bid packages advanced by Gilbane Building Company to maintain the scheduled substantial completion of the WNY Workforce Training Center by July 1, 2018. Mr. Stebbins reported that the early bid packages will be accounted for in the final guaranteed maximum price contract that is expected to be presented to the Board of Directors at the September or October meeting. The following seven subcontractor bids were presented to the Board for approval: roofing; above-ground plumbing; HVAC/mechanical piping; electrical; fire protection; sheetmetal ductwork; and building management systems (security, doors and HVAC controls). The Vice Chair requested that Mr. Stebbins present all of his memoranda concerning the various subcontractor bids at once and that the Board delay discussion, questions and consideration of the approval of the various subcontractor bids until Mr. Stebbins concluded his presentation. Mr. Stebbins then presented the following items:

- 4.3.1 Roofing** – Mr. Stebbins presented his August 29, 2017 memorandum regarding the proposed award of the roofing work for the 683 Northland project. Gilbane solicited proposals from seven contractors and received proposals from three contractors for

the work. Jameson Roofing Co., Inc. submitted the lowest cost proposal in the amount of \$1,492,449. The contractor submitted an M/WBE utilization plan that includes 25% MBE and 5% WBE utilization. This bid result was reviewed with the Real Estate Committee at its August 22, 2017 meeting and was recommended for Board approval.

- 4.3.2 Above-ground Plumbing** – Mr. Stebbins presented his August 29, 2017 memorandum regarding the proposed award of above-ground plumbing work for the 683 Northland project. Gilbane solicited proposals from ten contractors and received proposals from four contractors for the work. J.R. Swanson Plumbing Co., Inc. submitted the lowest cost proposal in the amount of \$901,535. The contractor submitted an M/WBE utilization plan that includes 25% MBE and 5% WBE utilization. This bid result was reviewed with the Real Estate Committee at its August 22, 2017 meeting and was recommended for Board approval.
- 4.3.3 HVAC/Mechanical Piping** – Mr. Stebbins presented his August 29, 2017 memorandum regarding the proposed award of mechanical piping work for the 683 Northland project. Gilbane solicited proposals from eight contractors and received proposals from five contractors for the work. Quackenbush Co., Inc. submitted the lowest cost proposal in the amount of \$1,474,000. The contractor submitted an M/WBE utilization plan that includes 25% MBE and 5% WBE utilization. This bid result was reviewed with the Real Estate Committee at its August 22, 2017 meeting and was recommended for Board approval.
- 4.3.4 Electrical** – Mr. Stebbins presented his August 29, 2017 memorandum regarding the proposed award of electrical work for the 683 Northland project. Gilbane solicited proposals from eleven contractors and received proposals from four contractors for the work. Frey Electric Construction Co. submitted the lowest cost proposal in the amount of \$2,620,000. The contractor submitted an M/WBE utilization plan that includes 25% MBE and 5% WBE utilization. Mr. Stebbins noted an arithmetic error in his August 29, 2017 memorandum. The memorandum is accurate in that the cost estimate for electrical work was \$2,700,000 and that the negotiated bid of Frey Electric Construction Co. was \$2,620,000. The memorandum incorrectly indicated that the Frey bid represented a savings of \$150,000 to the Project. The actual projected savings is \$80,000. This bid result was reviewed with the Real Estate Committee at its August 22, 2017 meeting and was recommended for Board approval.
- 4.3.5 Fire Protection** – Mr. Stebbins presented his August 29, 2017 memorandum regarding the proposed award of fire protection work for the 683 Northland project. Gilbane solicited proposals from four contractors and received proposals from two contractors for the work. Wm. T. Spaeder Co., Inc. submitted the lowest cost proposal in the amount of \$487,082. The contractor submitted an M/WBE utilization plan that includes 20% MBE and 0% WBE utilization. This bid result was reviewed with the Real Estate Committee at its August 22, 2017 meeting and was recommended for Board approval.
- 4.3.6 Sheetmetal Ductwork** – Mr. Stebbins presented his August 29, 2017 memorandum regarding the proposed award of sheetmetal ductwork for the 683 Northland project. Gilbane solicited proposals from ten contractors and received proposals from four contractors for the work. Mollenberg-Betz, Inc. submitted the lowest cost proposal in the amount of \$2,308,433. The contractor submitted an M/WBE utilization plan that includes 25% MBE and 0% WBE utilization. Mr. Stebbins noted that the memorandum contains two typographical errors. The cost estimate for sheetmetal ductwork was \$2,900,000, not \$575,000 as indicated in the memorandum. In addition, the Mollenberg-Betz, Inc. bid of \$2,308,433 will result in a savings of \$591,567. The savings figure of \$87,918 set forth in the memorandum is incorrect. This bid result was

reviewed with the Real Estate Committee at its August 22, 2017 meeting and was recommended for Board approval.

- 4.3.7 Building Management Systems (Security, Doors and HVAC Controls) – Mr. Stebbins presented his August 29, 2017 memorandum regarding the proposed award of building management system work for the 683 Northland project. Gilbane solicited proposals from four contractors and received proposals from four contractors for the work. Siemens Industry Inc. submitted the lowest cost proposal in the amount of \$744,468. The contractor submitted an M/WBE utilization plan that includes 31% MBE and 0% WBE utilization. This bid result was reviewed with the Real Estate Committee at its August 22, 2017 meeting and was recommended for Board approval.**

The Board discussed the subcontractor proposals. Mr. Kucharski noted that each of the subcontractor proposals were carefully considered at the August 22, 2017 Real Estate Committee meeting. Ms. Curry noted that Wm. T. Spaeder Co., Inc., the lowest responsible bidder for the fire protection work is not a local firm, being from Erie, Pennsylvania. Ms. Curry requested that this contractor be encouraged to partner with a local MBE or otherwise hire local minority employees wherever possible in completing the work under the contract. Mr. Mehaffy asked that the summary chart of early bid packages and Northland construction contracts indicate in some manner the percentage of local contractors or the value of work attributable to local contractors. After some discussion, "local" was defined as Erie County and the four surrounding counties of Niagara, Genesee, Wyoming and Cattaraugus. Mr. Beauford stated that he would like the award recommendation letters from Gilbane Building Company to indicate how many bid packages went out for the respective subcontractor bids. Mr. Stiehler explained Gilbane's process of vetting the experience, safety and financial solidity in prequalifying subcontractors who are considered prequalified. All contractors who apply are provided with a bid package, though not all recipients of bid packages submit proposals. Mr. LaConte indicated that whenever possible Gilbane holds pre-bid conferences at the site to assist subcontractors in making informative bids.

Ms. Whyte asked Mr. Stiehler to explain how qualified potential bidders are identified and invited to submit bids. Mr. Stiehler provided an explanation of Gilbane's process and procedures. Mr. Kucharski indicated that Gilbane Building Company was selected in response to a request for proposals in an open RFP process compliant with BUDC's procurement policy. The selection of individual subcontractors by Gilbane is not subject to the same process. Ms. Whyte observed that BUDC's procurement process differs from the procurement process utilized by Erie County. Mr. Kucharski commented that the Governance Committee is reviewing the BUDC procurement policy and has formed a subcommittee to update the policy.

There being no further discussion, Mr. Comerford made a motion to approve and authorize the President or Executive Vice President to execute Gilbane's August 21, 2017 award recommendation letters with respect to the following proposed contract awards:

- Gilbane's proposed award of the roofing contract to Jameson Roofing Co., Inc. for the contract amount of \$1,492,449.
- Gilbane's proposed award of the above-ground plumbing subcontract to J.R. Swanson Plumbing Co., Inc. for the contract amount of \$901,535.
- Gilbane's proposed award of the HVAC/mechanical piping subcontract to Quackenbush Co., Inc. for the contract amount of \$1,474,000.
- Gilbane's proposed award of the electrical subcontract to Frey Electric Construction Co. for the contract amount of \$2,620,000.

- Gilbane's proposed award of the fire protection subcontract to Wm. T. Spaeder Co., Inc. for the contract amount of \$487,082.
- Gilbane's proposed award of the Sheetmetal Ductwork subcontract to the Mollenberg-Betz, Inc. for the contract amount of \$2,308,433.
- Gilbane's proposed award of the building management systems subcontract to Siemens Industry Inc. for the contract amount of \$744,468.

The motion was seconded by Ms. Curry, with an amendment that all non-local subcontractors be encouraged to partner with local MBEs and/or to hire local minority employees whenever possible. The motion, as amended, was voted upon and unanimously carried, with the exception that Mr. Penman abstained from voting with respect to the award of the electrical subcontract to Frey Electric Construction Co.

4.4 741 Northland – Watts Water Tower Assessment Proposal – Mr. Cammarata presented his August 29, 2017 memorandum concerning the proposed Service Order No. 17 from Watts Architecture & Engineering for the assessment of the structural integrity and lead-based paint content of the water tower located on the Northland Campus in the rear portion of 741 Northland Avenue. The proposed work will include a visual inspection and sounding of the structural elements of the tower and sampling and testing of the paint on the tower. Mr. Cammarata indicated that Watts' proposed lump sum fee for this work is \$22,860 and further indicated that these costs are eligible for reimbursement from ESD. Mr. Cammarata further indicated that the staff is pursuing this assessment at this time to evaluate the potential liability exposure arising out of this water tower as well as to evaluate the potential use of the tower as a marketing and branding icon for the Northland Beltline. The Real Estate Committee reviewed the proposed Service Order at its August 22, 2017 meeting and recommended Board approval. Ms. Minkel made a motion to approve Watts Architecture & Engineering Service Order No. 17 for assessment of the water tower at 741 Northland Avenue for a lump sum cost \$22,860 and to authorize the President or Executive Vice President to execute the Service Order on behalf of BUDC. The motion was seconded by Ms. Gallagher-Cohen and unanimously carried.

4.5 Northland Beltline Project Update – Mr. Stebbins presented new renderings of the exterior of the 683 Northland WNY Workforce Training Center building and surrounding areas. He also displayed a rendering of the interior open space which is referred to as the Gallery.

With reference to 537 East Delavan, the demolition of the Houdaille building has been completed and the debris is cleared. Mr. Stebbins reported that the New York State Department of Environmental Conservation will soon begin its Superfund investigation and the size of the Superfund site may be reduced. Mr. Stepniak reported that the Northland Avenue roadwork should begin shortly.

Mr. Stebbins reported that asbestos mitigation work has commenced at 683 Northland.

Ms. Whyte expressed a desire to have a tour of the facility. Ms. Gallagher-Cohen noted that the BNP Development Advisory Committee has scheduled a tour for Wednesday, November 1, 2017 at 3:30 p.m. Ms. Gallagher-Cohen indicated that Board members are welcome to participate in that tour.

4.6 Buffalo Building Reuse Project Update – Ms. Merriweather reported that the 2017 summer cycle of Queen City Pop-Up is in its final week of operation. The participating retailers (Ten Thousand Villages, Baskets by Ms. Regina and Najah Sauces) are reporting a successful summer season in the Brisbane Building. Ms. Merriweather also indicated that she will soon complete and publicize a request for proposals for the downtown housing study.

Ms. Merriweather also informed the Board that she had prepared a packet of reprints of recent *Buffalo Business First* articles including an article regarding Ten Thousand Villages moving into permanent space at the Urban Leisure & Luxury Building at 736 Elmwood Avenue.

4.7 Buffalo Lakeside Commerce Park Update – Mr. Cammarata reported that the Superfund cleanup of the Parcel 4 site is continuing. He indicated that discussions were underway and that information was sent to a prospect for a five-acre site in BLCF. Mr. Cammarata concluded his report by indicating that requests for proposals for snowplowing and landscaping services for BLCF were recently issued.

4.8 Information Package – Mr. Cammarata reviewed the informational, marketing and media materials that were included in the monthly information package provided to the Board. Mr. Cammarata noted that the information package contains an August 25, 2017 article from *Buffalo Business First* announcing that Steven Tucker has been recruited and will be named the inaugural President and Chief Executive Officer of the WNY Workforce Training Center. Mr. Tucker has a deep resume in labor training and is currently the Assistant Executive Director at the Partners for a Competitive Workforce in Cincinnati. He was selected following a national search and was recruited to Buffalo with the assistance of Performance Managing Partners.

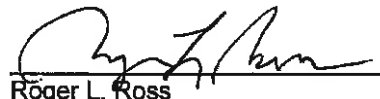
5.0 Late Files – None.

6.0 Tabled Items – None.

7.0 Executive Session – None.

8.0 Adjournment – There being no further business to come before the Board, upon motion made by Mr. Kucharski, seconded by Ms. Minkel and unanimously carried, the August 29, 2017 meeting of the Board of Directors was adjourned at 1:10 p.m.

Respectfully submitted,



Roger L. Ross
Secretary of the Meeting