

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

95 Perry Street
Buffalo, New York 14203
March 28, 2017
12:00 p.m.

1.0 Call to Order

Directors Present:

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

Directors Absent:

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

Officers Present:

Peter M. Cammarata, President
David A. Stebbins, Executive Vice President
Mollie M. Profic, Treasurer
Kevin J. Zanner, Secretary
Bradley Bach, Assistant Treasurer

Others Present: Sheldon Anderson, Office of NYS Assemblywoman Crystal D. Peoples-Stokes; James Fink, *Buffalo Business First*; Matthew Ricchiazzi; Robert Sanders, Watts Architecture & Engineering; Michael Taylor, New York Business Development Corporation; and Royce Woods, Mayor's Office of Strategic Planning.

Roll Call – The Secretary called the roll of directors at 12:05 p.m. and a quorum was determined to be present. Ms. Curry joined the meeting during the presentation of item 4.5. Mr. Nasca left the meeting after the vote on item 4.8. Ms. Gallagher-Cohen left after the vote on item 4.10.

2.0 Presentation of the Minutes – The minutes of the February 28, 2017 meeting of the Board of Directors were presented. Mr. Nasca made a motion to approve the meeting minutes. The motion was seconded by Mr. Oblatz and unanimously carried.

3.0 Monthly Financial Report – Ms. Profic presented the monthly financial report for the period ending February 28, 2017. The unrestricted cash balance at the end of the period was \$12,795,747 and the net position at the end of the period was \$16,595,030. Year-to-date revenue was \$734,285

and year-to-date expenses were \$776,653, resulting in a year-to-date net loss of (\$42,368). After a brief discussion, Mr. Comerford made a motion to accept the financial report. The motion was seconded by Mr. Beauford and unanimously carried.

4.0 New Business

4.1 Governance Committee Report – Mr. Kucharski presented the March 28, 2017 report of the Governance Committee and updated the Board regarding the activities of the Governance Committee.

4.2 Code, Policies, Charter and Guidelines

4.2.1 Code of Ethics (Amend & Adopt) – Mr. Zanner reviewed the proposed amendments to the Code of Ethics. The changes are intended to conform to changes to the conflict of interest provisions of the Not-for-Profit Corporation Law which take effect in May. Ms. Gallagher-Cohen made a motion to approve the amended Code of Ethics. The motion was seconded by Ms. Minkel and unanimously carried.

4.2.2 Procurement Policy (Re-adoption) – Mr. Cammarata presented the Procurement Policy, which is being recommended for re-adoption without changes. Ms. Whyte made a motion to re-adopt the Procurement Policy in the form presented to the Board. The motion was seconded by Mr. Obletz and unanimously carried.

4.2.3 Governance Committee Charter (Re-adoption) – Mr. Cammarata presented the Governance Committee Charter, which is being recommended for re-adoption without changes. Ms. Whyte made a motion to re-adopt the Governance Committee Charter in the form presented to the Board. The motion was seconded by Mr. Obletz and unanimously carried.

4.2.4 Property Disposition Guidelines (Re-adoption) – Mr. Cammarata presented the Property Disposition Guidelines, which are being recommended for re-adoption without changes. Ms. Whyte made a motion to re-adopt the Property Disposition Guidelines in the form presented to the Board. The motion was seconded by Mr. Obletz and unanimously carried.

4.2.5 Whistleblower Policy (Re-adoption) – Mr. Cammarata presented the Whistleblower Policy, which is being recommended for re-adoption without changes. Ms. Whyte made a motion to re-adopt the Whistleblower Policy in the form presented to the Board. The motion was seconded by Mr. Obletz and unanimously carried.

4.2.6 Travel, Conferences, Meals & Entertainment Policy (Re-adoption) – Mr. Cammarata presented the Travel, Conferences, Meals and Entertainment Policy, which is being recommended for re-adoption without changes. Ms. Whyte made a motion to re-adopt the Travel, Conferences, Meals and Entertainment Policy in the form presented to the Board. The motion was seconded by Mr. Obletz and unanimously carried.

4.3 2016 Mission Statement and Performance Measurements Review – Mr. Cammarata presented a report of BUDC's achievement of the Performance Measurements that were established by the BUDC Board of Directors for the 2016 calendar year. Mr. Cammarata noted that the results were reviewed with the Governance Committee and are presented to the Board for information purposes.

4.4 Adoption of 2017 Mission Statement and 2017 Performance Measurements – Mr. Cammarata presented his March 28, 2017 memorandum regarding the proposed 2017 mission statement and 2017 performance measurements. He noted that the mission statement and

performance measurements are subject to annual Board review and approval. No changes are being proposed to the BUDC mission statement. The performance measurements for 2017 have been updated to include a measurable relating to problem properties. Mr. Kucharski made a motion to approve the 2017 mission statement and the 2017 performance measurements in the form presented to the Board. The motion was seconded by Mr. Elsenbeck and unanimously carried.

4.5 2016 Public Authorities Annual Report Approval – Mr. Cammarata and Ms. Boudreau presented the 2016 Public Authorities Annual Report. Ms. Boudreau noted that this report was reviewed with the Governance Committee and the Audit & Finance Committee. Mr. Cammarata provided some highlights from the operations and accomplishments section of the report. Ms. Curry made a motion to approve 2016 Public Authorities Annual Report in the form presented to the Board. The motion was seconded by Mr. Comerford and unanimously carried.

4.6 Audit & Finance Committee Report – Mr. Penman presented the March 28, 2017 report of the Audit & Finance Committee. He updated the Board regarding the recent activities of the Audit & Finance Committee, including completion of the Audit & Finance Committee self-evaluation, the financial audit process, Audit & Finance Committee training, review of professional costs and fees, BBRP grant expenditures and ECIDA salary reimbursement matters.

4.6.1 2016 Audited Financial Statements Approval – Ms. Profic reviewed with the Board the 2016 audited financial statements prepared by BUDC’s auditors, Lumsden & McCormick, LLP. Ms. Profic reported that the auditors issued an “unqualified” (clean) opinion that the financial statements present fairly, in all material respects, the financial position of the Corporation as of December 31, 2016 and December 31, 2015 and the changes in net position and cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States. No material weaknesses or control deficiencies were found during the course of the audit process. Ms. Profic noted that the Audit & Finance Committee met with the auditors on March 14th to review the draft 2016 audited financial statements and that the Committee is recommending that the Board approve the 2016 audited financial statements in the form presented to the Board.

The Board discussed the draft audited financial statements. At the conclusion of the discussion, Mr. Nasca made a motion to accept the 2016 audited financial statements in the form presented to the Board. The motion was seconded by Mr. Stepniak and unanimously carried.

4.6.2 2016 Audited Financial Statements-Brownfield Fund – Ms. Profic presented for information purposes the 2016 audited financial statements for the Buffalo Brownfields Redevelopment Fund (BBRF). The total net increase in assets over the prior year was \$41,854. As ECIDA serves as custodian for the fund, the 2016 financial statements will be presented for approval by the ECIDA Board at its March meeting.

4.6.3 2016 Investment Report Approval – Ms. Profic presented the 2016 Investment Report to the Board. Ms. Profic noted that the Audit & Finance Committee reviewed the 2016 Investment Report and is recommending Board approval. Mr. Nasca made a motion to approve the 2016 Investment Report in the form presented to the Board. The motion was seconded by Mr. Stepniak and unanimously carried.

4.6.4 Investment and Deposit Policy (Re-adoption) – Ms. Profic presented the BUDC Investment and Deposit Policy. The Audit & Finance Committee reviewed the policy and is recommending that the Board re-adopt the policy without changes. Mr. Mehaffy made a motion to re-adopt the Investment and Deposit Policy in the form presented to the Board. The motion was seconded by Ms. Whyte and unanimously carried.

4.6.5 Audit & Finance Committee Charter (Re-adoption) – Ms. Profic presented the Audit & Finance Committee Charter. She noted that no changes to the Charter are being proposed by the Audit & Finance Committee at this time. Mr. Cammarata noted that both the Audit & Finance and Governance Committee Charters will be examined in more detail based on discussions that took place at the March meetings of both committees. Mr. Penman commented that BUDC's growth has resulted in significant work being performed at the committee level, and that the Board may want to consider delegating certain decisions to the committees. Ms. Gallagher-Cohen suggested that BUDC executive staff provide initial recommendations for changes. At the close of the discussion, Ms. Gallagher-Cohen made a motion to re-adopt the Audit & Finance Committee Charter in the form presented to the Board. The motion was seconded by Ms. Curry and unanimously carried.

4.6.6 Reimbursement of 2016 Brownfield Expenses from BBRF – Ms. Profic presented her March 28, 2017 memorandum to the Board regarding the reimbursement of third party expenses from the Buffalo Brownfields Redevelopment Fund. Ms. Profic noted that third party expenses incurred by BUDC for the Buffalo Lakeside Commerce Park (BLCP), RiverBend and Northland Corridor projects are eligible for reimbursement from the BBRF. Ms. Profic noted that the Audit & Finance Committee reviewed this item and is recommending that the Board authorize the reimbursement of third party expenses in the amount of \$337,796 from the BBRF for the BLCP, RiverBend and Northland Corridor projects. The Board discussed the reimbursement request. In response to questions from Mr. Oblatz, Mr. Cammarata indicated that a portion of the reimbursement request for BLCP expenses relates to property maintenance costs that are not covered by the other members of the BLCP property owners association. Mr. Cammarata also confirmed that the Board previously designated the RiverBend and Northland Corridor projects as eligible for the reimbursement of third-party costs under the BBRF.

At the conclusion of the discussion, Mr. Oblatz made a motion to reimburse BUDC from the BBRF for 2016 third party costs incurred by BUDC for the BLCP, RiverBend and Northland Corridor projects in the amount of \$337,796, as detailed in the March 28, 2017 memorandum to the Board. The motion was seconded by Mr. Hersey and unanimously carried.

4.7 683 Northland – Watts Construction Document Phase Proposal – Mr. Stebbins presented his March 28, 2017 memorandum regarding Service Order No. 13, which was submitted by Watts Architecture & Engineering for the 683 Northland project. The work involves construction document services, and the total cost of these services is \$1,121,535.00. Mr. Stebbins noted that ESD project architect Dennis Conroy performed a peer review of the pricing of this Service Order and indicated that it was reasonable and within industry standards. Mr. Stebbins introduced Robert Sanders from Watts to answer any questions regarding the proposed Service Order. In response to a question from Mr. Mehaffy, Mr. Stebbins indicated that Gilbane also reviewed the Service Order pricing and indicated it was appropriate. Mr. Stebbins also indicated, in response to a question from Mr. Oblatz, that this work covers the entire building, not just that portion to be occupied by the WNY Workforce Training Center. Ms. Curry asked for a breakdown of the subcontractors being used for the project. Mr. Cammarata stated that this information is being tracked internally for purposes of complying with ESD grant requirements and that either BUDC or ESD would provide this information to Ms. Curry. At the conclusion of the discussion, Ms. Curry made a motion to approve Service Order No. 13 for construction document services from Watts Architecture & Engineering at a lump sum cost of \$1,121,535.00 and to authorize the President or Executive Vice President to execute the Service Order on behalf of BUDC. The motion was seconded by Mr. Comerford and unanimously carried.

- 4.8 BUDC/COB CDBG Funding Agreement** – Mr. Stebbins presented his March 28, 2017 memorandum regarding a proposed funding agreement with the City of Buffalo to receive up to four million dollars in Community Development Block Grant (CDBG) funds. The funding will be used for the demolition of 537 East Delavan, asbestos/hazmat remediation at 683 Northland and architecture/engineering costs associated with both projects. Mr. Stebbins noted that the funding agreement will include provisions obligating BUDC to comply with M/WBE and HUD Section 3 requirements. The Real Estate Committee reviewed this item at its March 21st meeting and is recommending approval. Ms. Whyte made a motion to approve BUDC entering into a funding agreement with the City of Buffalo for the use of up to four million dollars in CDBG grant funds for the Northland Corridor project and to authorize the President or Executive Vice President to execute the agreement on behalf of BUDC. The motion was seconded by Mr. Mehaffy and unanimously carried.
- 4.9 683 Northland – Gilbane Destructive Testing Proposal** – Mr. Stebbins presented his March 28, 2017 memorandum regarding a proposal from 3480 Group to perform geotechnical and destructive testing work at 683 Northland. The purpose of this work is to identify potential unforeseen conditions that, if found during construction, could result in delay and increased cost to the project. The cost of the work is \$30,450 and would be processed as an amendment to the Gilbane construction management agreement. The Real Estate Committee reviewed this item at its March 21st meeting and is recommending approval. Mr. Kucharski made a motion to approve the Gilbane/3480 Group destructive testing proposal and amendment to the pre-construction portion of the Gilbane construction management agreement at a lump sum cost of \$30,450 and to authorize the President or Executive Vice President to execute the contract amendment on behalf of BUDC. The motion was seconded by Mr. Stepniak and unanimously carried.
- 4.10 683 Northland – 631/683 Property Transfer & Reciprocal Easement** – Mr. Cammarata presented his March 28, 2017 memorandum to the Board regarding the proposed relocation of the property line between 683 Northland and 631 Northland. Mr. Cammarata explained that, based on the site plan completed for the WNY Workforce Training Center, a portion of the property (approximately 1.27 acres) that is currently a part of 631 Northland Avenue will need to be added to the 683 Northland Avenue parcel. This will allow for the entire parking lot for the WNY Workforce Training Center to be located on the same parcel. In addition, there will be a reciprocal access easement area (covering .33+/- acres) which is required for the shared use of a driveway and truck turnaround at the south end of the 631 and 683 Northland properties. The Board discussed the proposed relocation of the property line and property ownership issues. Mr. Cammarata explained that BUDC owns the two properties through separate limited liability companies. There being no further discussion, upon motion made by Mr. Hersey, seconded by Mr. Beauford and unanimously carried, it was resolved, that (i) NorDel II, LLC is hereby authorized to transfer ownership of the 1.27 acre parcel of real property located at 631 Northland Avenue to 683 Northland LLC; (ii) 683 Northland LLC is authorized to accept the conveyance of the 1.274 acre parcel; (iii) NorDel II, LLC and 683 Northland LLC are authorized to enter into a reciprocal easement agreement for access to a shared driveway and truck turnaround; and (iv) each of the President or Executive Vice President of BUDC are authorized to execute and deliver on behalf of NorDel II, LLC and 683 Northland LLC and/or BUDC any and all agreements, instruments and documents necessary or appropriate and take any and all actions necessary or proper to carry out the matters authorized herein.
- 4.11 1669 Fillmore Remediation Proposal** – Mr. Stebbins presented his March 28, 2017 memorandum regarding a proposal to undertake an environmental remediation project at 1669 Fillmore Avenue and to acquire that property and eight contiguous properties from the City of Buffalo. As described in the memorandum, several underground storage tanks (USTs) were discovered at 1669 Fillmore Avenue, a vacant City-owned site located immediately adjacent to the Northland Avenue right-of-way. The City has requested that BUDC fund the remediation because the USTs were discovered as part of an environmental investigation for the overall Northland Corridor redevelopment effort. The City obtained a quote from Core Environmental to

complete the remediation for \$90,000. BUDC obtained a separate quote from LaBella Associates to perform the work for \$52,900. The cost of the work would be paid for from the Buffalo Brownfields Redevelopment Fund. Mr. Stebbins also indicated that the City is willing to transfer to BUDC fee title to 1669 Fillmore and eight other contiguous properties (totaling 1.7 acres) as part of the remediation. An abandoned industrial building slated for demolition by the City is located at one of the properties (1681 Fillmore). The remaining parcels are vacant. Mr. Stebbins noted that the Real Estate Committee reviewed this item at its March 21st meeting and is recommending approval. The Board discussed the proposal. In response to a question from Mr. Comerford, Mr. Cammarata indicated that BUDC would add these parcels to its insurance policies and that BUDC would be responsible for property ownership costs.

At the conclusion of the discussion, Ms. Minkel made a motion for BUDC to (i) proceed with the remediation of 1669 Fillmore Avenue, (ii) contract with LaBella Associates to perform the UST removal and property remediation for the proposed fee of \$52,900, and (iii) utilize Buffalo Brownfield Redevelopment Funds for the remediation, the foregoing approval being contingent upon the City of Buffalo and BUDC entering into a property transfer agreement for BUDC or a BUDC subsidiary to acquire 1669 Fillmore Avenue and the other eight adjoining properties for future development purposes for \$1.00, and to authorize the President or Executive Vice President to execute all such agreements and documents and take such actions as may be necessary or appropriate to implement the actions authorized herein. The motion was seconded by Mr. Eisenbeck and unanimously carried.

4.12 612 Northland – Kathy Kinan C.A./C.I. Proposal – Mr. Stebbins presented his March 28, 2017 memorandum regarding a proposal to engage Kathleen M. Kinan, R.A. to provide construction administration services to BUDC for the renovation of 612 Northland for a fee equal to five percent (5%) of the construction work cost. Mr. Stebbins noted that construction cost estimates range from \$372,000 to \$588,850, which would result in a fee of between \$18,600 and \$29,343. He also noted that the Real Estate Committee reviewed this item at its March 21st meeting and is recommending approval. Ms. Curry made a motion to approve the March 10, 2017 proposal from Kathleen M. Kinan, R.A. to provide construction administration services for a fee equal to five percent (5%) of the construction work cost, estimated to range from \$18,600 to \$29,343 and to authorize the President or Executive Vice President to execute the contract with Ms. Kinan on behalf of BUDC. The motion was seconded by Mr. Comerford and (with Mr. Mehaffy abstaining) carried with eleven affirmative votes (11-0-1).

4.13 New Bank Account Creation – 683 Northland S.P.E.s – Ms. Profic presented her March 28, 2017 memorandum and depository resolutions for the establishment of depository accounts for 683 Northland LLC and 683 WTC, LLC at Key Bank. Mr. Obletz made a motion to approve the depository banking resolutions for the establishment depository accounts for 683 Northland LLC and 683 WTC, LLC at Key Bank. The motion was seconded by Mr. Kucharski and unanimously carried.

4.14 Buffalo Building Reuse & Northland Corridor Project Updates – Ms. Merriweather and Mr. Stebbins circulated written updates for the Buffalo Building Reuse Project and the Northland Corridor project.

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. Stepniak, seconded by Ms. Whyte and unanimously carried, the March 28, 2017 meeting of the Board of Directors was adjourned at 1:25 p.m.

Respectfully submitted,



Kevin J. Zanner, Secretary