

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

95 Perry Street
Buffalo, New York 14203
March 31, 2015
12:00 p.m.

1.0 Call to Order

Directors Present:

James W. Comerford
Dennis W. Elsenbeck
Dottie Gallagher-Cohen
Thomas A. Kucharski
Woodrow W. Maggard
Brendan R. Mehaffy
Kimberley A. Minkel
Dennis M. Penman (Vice Chair)
Rev. Darius G. Pridgen
Craig A. Slater
Steven J. Stepniak
Maria R. Whyte

Directors Absent:

Thomas Beauford
Hon. Byron W. Brown (Chair)
Benjamin N. Obletz

Officers Present:

Peter M. Cammarata, President
David A. Stebbins, Vice President
Andrew Schoepich, Treasurer
Kevin J. Zanner, Esq., Secretary
Theresa Carpenter, Assistant Treasurer

Others Present: Dawn Boudreau, ECIDA Compliance Officer; Diane K. Church, Hurwitz Fine, P.C.; Jonathan Epstein, *The Buffalo News*; James Fink, *Buffalo Business First*; Brandye Merriweather, BUDC Project Coordinator; and Michael Taylor, New York Business Development Corporation.

Roll Call – The Secretary called the roll of directors at 12:10 p.m. and a quorum was determined to be present. Mr. Mehaffy served as temporary Chair of the meeting. Rev. Pridgen joined the meeting during the presentation of item 3.0.

2.0 Presentation of the Minutes – The minutes of the February 24, 2015 meeting of the Board of Directors were presented. Upon motion made by Ms. Whyte, seconded by Mr. Maggard and unanimously carried, the minutes of the February 24, 2015 meeting of the Board of Directors were approved.

3.0 Monthly Financial Report – Mr. Schoepich presented the monthly financial report for the period ending February 28, 2015. The cash balance at the end of the period was \$3,604,188 and the net position of BUDC at the end of the period was \$10,596,532. Year-to-date revenue was \$70,826 and year-to-date expenses were \$122,655, resulting in a year-to-date net loss of (\$51,829). Ms.

Gallagher-Cohen made a motion to accept the financial report. The motion was seconded by Mr. Comerford and unanimously carried.

4.0 New Business

4.1 Governance Committee Report – Mr. Kucharski presented the March 31, 2015 report of the Governance Committee. Mr. Kucharski noted that the report outlines the activities of the Governance Committee, and was included as part of the Board meeting materials.

4.2 Code, Policies, Charter and Guidelines

4.2.1 Code of Ethics – Mr. Cammarata and Mr. Zanner presented the revised Code of Ethics. Mr. Zanner indicated that the revisions to the Code of Ethics are intended to conform to the “related party transaction” provisions of the Nonprofit Revitalization Act. The Governance Committee revised the revised Code of Ethics at its March 12, 2015 meeting and is recommending Board approval. After a brief discussion, Mr. Stepniak made a motion to approve the amended Code of Ethics in the form presented to the Board. The motion was seconded by Mr. Maggard and unanimously carried.

4.2.2 Procurement Policy – Mr. Cammarata reported that two amendments are proposed to the Procurement Policy. The purpose of these amendments is to confirm that BUDC may utilize a request for qualifications (RFQ) process to solicit professional services, and to increase from \$20,000 to \$25,000 the threshold dollar amount for requiring an RFP or RFQ for professional services. After a discussion regarding the proposed amendments, Mr. Stepniak made a motion to approve the amended Procurement Policy in the form presented to the Board. The motion was seconded by Mr. Maggard and unanimously carried.

4.2.3 Governance Committee Charter – Mr. Cammarata presented the Governance Committee Charter. No changes to the Governance Committee Charter were proposed by the Governance Committee. Ms. Gallagher-Cohen made a motion to approve and re-adopt the Governance Committee Charter in the form presented to the Board. The motion was seconded by Ms. Minkel and unanimously carried.

4.2.4 Property Disposition Guidelines – Mr. Cammarata presented the BUDC Property Disposition Guidelines. He noted that the Governance Committee is not proposing any changes to the Property Disposition Guidelines. Ms. Gallagher-Cohen made a motion to approve and re-adopt the Property Disposition Guidelines in the form presented to the Board. The motion was seconded by Ms. Minkel and unanimously carried.

4.2.5 Whistleblower Policy – Mr. Cammarata presented the BUDC Whistleblower Policy. No changes to the Whistleblower Policy were proposed by the Governance Committee. Ms. Gallagher-Cohen made a motion to approve and re-adopt the Whistleblower Policy in the form presented to the Board. The motion was seconded by Ms. Minkel and unanimously carried.

4.2.6 Travel, Conferences, Meals & Entertainment Policy – Mr. Cammarata presented the BUDC Travel, Conferences, Meals and Entertainment Policy. He noted that the Governance Committee is not proposing any changes to the policy. Ms. Gallagher-Cohen made a motion to approve and re-adopt the Travel, Conferences, Meals and Entertainment Policy in the form presented to the Board. The motion was seconded by Ms. Minkel and unanimously carried.

- 4.3 2014 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 2014 calendar year. Mr. Cammarata noted that the results were reviewed in detail by the Governance Committee and are presented to the Board for informational purposes.
- 4.4 Adoption of 2015 Mission Statement and Performance Measurements** – Mr. Cammarata presented his March 31, 2015 memorandum regarding the proposed 2015 mission statement and performance measurements. He noted that the mission statement and performance measurements are subject to annual Board review and approval. The performance measurements before the Board incorporate modifications recommended by the Governance Committee to add M/WBE and local sourcing goals to the document. No changes are being proposed to the BUDC mission statement. After a brief discussion, Mr. Kucharski made a motion to approve the 2015 mission statement and performance measurements in the form presented to the Board. The motion was seconded by Mr. Elsenbeck and unanimously carried.
- 4.5 2014 Public Authorities Annual Report Approval** – Mr. Cammarata and Ms. Boudreau presented the 2014 Public Authorities Annual Report. This report is a requirement of the Public Authorities Law. Mr. Cammarata indicated that the Governance Committee reviewed the annual report and is recommending that the Board approve the report. The Board briefly discussed the report. At the conclusion of the discussion, Rev. Pridgen made a motion to approve 2014 Public Authorities Annual Report in the form presented to the Board. The motion was seconded by Mr. Penman and unanimously carried.
- 4.6 Audit & Finance Committee Report** – Mr. Penman presented the March 31, 2015 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, ECIDA salary reimbursement matters and payment of outstanding sick leave obligations.
- 4.6.1 2014 Audited Financial Statements Approval** – Mr. Schoeppich presented the draft 2014 audited financial statements prepared by Lumsden & McCormick, LLP. Mr. Schoeppich 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, 2014 and December 31, 2013 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 proposed accounting adjustments were required and no auditor recommendations were included in the management letter. Mr. Schoeppich noted that the Audit & Finance Committee met with the auditors on March 18th to review the draft 2014 audited financial statements, and that the Committee is recommending that the Board approve the 2014 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. Penman made a motion to accept the 2014 audited financial statements in the form presented to the Board. The motion was seconded by Ms. Gallagher-Cohen and unanimously carried.
- 4.6.2 2014 Audited Financial Statements-Brownfield Fund** – Mr. Schoeppich presented for information purposes the 2014 audited financial statements for the Buffalo Brownfields Redevelopment Fund (BBRF). He briefly explained the purpose and operation of the BBRF. He also noted that ECIDA serves as custodian for the fund, and that the 2014 financial statements were approved by the ECIDA Board at its March 25th meeting.

- 4.6.3 2014 Investment Report Approval** – Mr. Schoeppich presented the 2014 Investment Report to the Board. Mr. Schoeppich noted that the Audit & Finance Committee reviewed the 2014 Investment Report and is recommending Board approval. Mr. Penman made a motion to approve the 2014 Investment Report in the form presented to the Board. The motion was seconded by Ms. Gallagher-Cohen and unanimously carried.
- 4.6.4 Investment and Deposit Policy** – Mr. Schoeppich presented the BUDC Investment and Deposit Policy. The Audit & Finance Committee is recommending one technical change to the policy to permit the Assistant Treasurer to act on behalf of BUDC. Mr. Penman made a motion to approve the Investment and Deposit Policy in the form presented to the Board. The motion was seconded by Ms. Gallagher-Cohen and unanimously carried.
- 4.6.5 Audit & Finance Committee Charter** – Mr. Schoeppich presented the Audit & Finance Committee Charter. No changes are proposed to the Charter. Mr. Penman made a motion to approve and re-adopt the Audit & Finance Committee Charter in the form presented to the Board. The motion was seconded by Ms. Gallagher-Cohen and unanimously carried.
- 4.6.6 Reimbursement of Brownfield Expenses from BBRF** – Mr. Schoeppich presented his March 31, 2015 memorandum to the Board regarding the reimbursement of third party expenses from the Buffalo Brownfields Redevelopment Fund. Mr. Schoeppich noted that third party expenses for BLCP and RiverBend are presently eligible for reimbursement from the BBRF. During 2014, BUDC commenced work on the Northland Avenue Beltline Corridor project, a major part of which will include brownfields remediation activities. Mr. Schoeppich noted that the Audit & Finance Committee reviewed this item and is recommending that the Board designate the Northland Avenue Beltline Corridor project as a comparable brownfield project for purposes of the BBRF and authorize the reimbursement of third party expenses in the amount of \$175,216 from the BBRF for the BLCP, RiverBend and Northland projects. The Board discussed the reimbursement request and the proposed designation of the Northland Avenue Beltline Corridor project as a comparable project. In response to a question from Ms. Whyte, Mr. Stebbins confirmed that the BBRF documents permit reimbursement of third party expenses for other brownfield projects located in the City of Buffalo provided that the Board designates the project as a comparable brownfield project.

At the conclusion of the discussion, Mr. Penman made a motion to designate the Northland Avenue Beltline Corridor project as a comparable project for BBRF purposes and to reimburse BUDC from the BBRF for 2014 third party costs incurred by BUDC for the BLCP, RiverBend and Northland Avenue Beltline Corridor projects in the amount of \$175,216, as detailed in the March 31, 2015 memorandum to the Board. The motion was seconded by Mr. Stepniak and unanimously carried.

- 4.7 BBRP Loan Program – Main and Cathedral Loan Commitment Modification** – Mr. Stebbins presented his March 31, 2015 memorandum to the Board regarding two additional modifications to the Main and Cathedral Development, LLC loan approval. Mr. Stebbins noted that the Board of Directors approved this loan at its December 16, 2014 meeting, and that the Board approval contemplated that BUDC would take a subordinate collateral position relative to the primary lender (M&T Bank). The primary lender is now requiring that the BUDC loan also be subordinated as to payment. Payments of loan interest and the balloon principal payment will continue to be permitted as long as the primary lender has not declared an event of default. Mr. Stebbins explained that the second modification would allow for BUDC to extend by six months the 24 months interest-only payment period if the primary lender also extends its repayment period with the borrower. Mr. Stebbins noted that these modifications were reviewed with NYBDC, and he referred the Committee to NYBDC's February 27, 2015 Memorandum of Modification that was included in the meeting agenda materials. The Downtown Committee also

reviewed the modifications and is recommending Board approval. A lengthy discussion followed Mr. Stebbins' presentation. In response to questions regarding the loan modifications, Mr. Taylor noted that it is not unusual to have several modifications after a loan approval is issued, and that the timing of these modifications is due to BUDC's approval having preceded the primary lender's issuance of a commitment letter. Ms. Church explained the legal effect of the modifications. Mr. Slater commented that BUDC should operate the loan program like a traditional lender and charge appropriate fees for taking a second position on loans. There was also discussion regarding how the new institutional loan program is expected to operate.

At the conclusion of the discussion, Mr. Kucharski made a motion that the loan to Main and Cathedral Development, LLC be subordinate to the primary lender's debt as well as its collateral position and that the terms of the BUDC loan approval be modified to allow BUDC, at its option, to extend the loan term for an additional six month interest-only period if the loan is not paid at the end of the twenty-four month term. The motion was seconded by Ms. Minkel carried with ten affirmative votes (10-1-1). Mr. Comerford voted in the negative and Mr. Penman abstained.

4.8 Buffalo Building Reuse Project Update – Ms. Merriweather presented an update regarding Buffalo Building Reuse project matters. Multiple proposals were received from developers for the third round of BBRP loan program funding. A selection committee will review the proposals and submit selected proposals to the Downtown Committee for consideration. Ms. Merriweather also reported that a request for proposals for the Queen City Pop-up Retail program were issued last week. Media coverage and program feedback have been very favorable. In response to a question from Rev. Pridgen, Ms. Merriweather explained the program's community and neighborhood outreach efforts.

4.9 Northland Corridor Project Update – Mr. Stebbins reported that the closing for the acquisition of multiple properties owned by Michael Sweeney is tentatively scheduled for early April. A request for proposals for Northland property management services will be issued during the first week of April and an information meeting regarding the RFP will be held with interested respondents. Mr. Stebbins also reported that the project consultant, LiRo Engineers, is engaged in preliminary environmental work on the 537 East Delavan Avenue property. Work on the community outreach portion of the project has also commenced, and a public meeting will be scheduled for this summer. Mr. Stebbins also noted that the City Department of Public Works will be reviewing potential public infrastructure improvements for the Northland project.

4.10 Information Package – Mr. Cammarata reviewed the information packet of materials provided to the Board members. Ms. Gallagher-Cohen commented that the new Brownfield Cleanup Program legislation will be favorable to Western New York.

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 Ms. Minkel, seconded by Mr. Penman and unanimously carried, the March 31, 2015 meeting of the Board of Directors was adjourned at 1:10 p.m.

Respectfully submitted,

Kevin J. Zanner, Secretary