

**Minutes of the Meeting
of the
Real Estate Committee
of
Buffalo Urban Development Corporation**

**95 Perry Street
Buffalo, New York
August 24, 2021
12:00 p.m.**

Committee Members Present:

Janique S. Curry
Thomas A. Kucharski
Brendan R. Mehaffy
Kimberley A. Minkel, Chair
Dennis M. Penman

Committee Members Absent:

Maria R. Whyte

Officers Present:

Brandye Merriweather, President
Rebecca Gandour, Executive Vice President
Kevin J. Zanner, Secretary
Atiqa Abidi, Assistant Treasurer

Guests Present: Alexis M. Florczak, Hurwitz & Fine, P.C.; Arthur Hall, Senior Project Manager, BUDC; Thomas Mancuso, Mancuso Business Development Group; and Antonio Parker, BUDC Project Manager.

Roll Call: The meeting was called to order at 12:08 p.m. A quorum of the Committee was not present. Agenda items 2(a) and 2(b) were presented. Ms. Curry joined the meeting during the presentation of agenda item 2(b), at which time the Secretary confirmed that a quorum of the Committee was present. Mr. Mehaffy joined the meeting during the presentation of Item 2(f).

1.0 Approval of Minutes – Meeting of July 20, 2021 – The minutes of the July 20, 2021 Real Estate Committee meeting were presented. Mr. Penman made a motion to approve the meeting minutes. The motion was seconded by Ms. Curry and unanimously carried (4-0-0).

2.0 Northland Beltline Corridor

- (a) Northland Central – NWTC/ESD/BUDC Memorandum of Understanding Update** – Mr. Hall reported that the company that was initially engaged to perform an equipment inventory has been re-engaged to update the equipment inventory list.
- (b) Northland Central – LEED Certification/NYSERDA Update** – Mr. Hall reported on the receipt of the \$23,136 award for the achievement of LEED silver status for 683 Northland.
- (c) Northland Central – Phase I Construction Additional HVAC Work Claim Update** – Mr. Zanner reported that a complaint was served upon Watts Architecture and Engineering and

Popli Design Group relating to the defective design of the Phase I HVAC system at 683 Northland. Answers from Watts and Popli are anticipated within the next week.

- (d) **Northland Corridor – 714 Northland Tenant Update** – Mr. Mancuso reported on lease renewal negotiations with Wellworth Products. The proposed renewal terms include a five year-extension of the current lease, with an additional tenant option for five years on a triple-net basis.
- (e) **Northland Corridor – Other Tenant & Property Management Updates** – Mr. Mancuso reported on a property damage matter involving a FedEx truck and fencing at 714 Northland property. FedEx is expected to pay for needed repairs to the fence. He also updated the Committee on several other maintenance matters, including filter replacements and a chiller refrigerant issue that is being repaired at an approximate cost of \$4,000. Mr. Mancuso then reported on tenant matters. SparkCharge has laid off some workers due to supply chain delays but anticipates usual production resuming once these delays are resolved. Garwood is continuing to invest in its space. A walk-through with Garwood of the 612 Northland space is scheduled in September.
- (f) **Northland Corridor – Misc. Project Management Updates** – Mr. Hall presented the following Northland Corridor updates to the Committee:

683 Northland: BUDC submitted a reimbursement request in the amount of \$47,222.88 from the ESD equipment grant.

Community Solar/Microgrid: BUDC submitted a first draw request to ESD for approximately \$50,000 in connection with the Microgrid project.

612 Northland: Albright Knox continues to showcase the Herve Tullet exhibit, which runs through September 12th.

714 Northland: Albright Knox continues to make progress on the mural at 714 Northland--three paintings are currently complete.

537/541 E. Delavan: A CCLR presentation was recently held, and staff continues to work on informational sheets regarding the 537/541 E. Delavan site. A grant application was submitted to the National Endowment Fund in the amount of \$150,000 for creative placemaking and public arts funding support. BUDC is partnering with Albright Knox and LISC to focus on bringing public art to six intersections within the Northland corridor.

Community Outreach: The Northland Beltline Taxpayers Association is hosting its Fall Festival on September 23rd.

Business Network Series: A meeting is scheduled for August 25, 2021 to plan the next Business Network Series on October 28, 2021, which will focus on contractors.

3.0 Buffalo Lakeside Commerce Park

- (a) **Canal Park Maintenance Agreement and Canal Bridge Maintenance Agreement** – Ms. Gandour presented her August 24, 2021 memorandum regarding the canal park and canal bridge maintenance agreements. In October 2011, BUDC and the City of Buffalo entered into ten-year maintenance agreements with respect to Ship Canal Commons. These agreements are set to expire October 28, 2021, unless the City extends the term. Following the initial ten-year term, either BUDC or the City may terminate the agreements upon at least one-year written notice

to the other party. Ms. Gandour noted that over the past ten years, BUDC has incurred almost \$1.5 million in costs under these agreements for property maintenance obligations. She also noted that BUDC's responsibility for maintenance obligations at Ship Canal Commons was not intended to be a long-term obligation; rather, these obligations were to be assigned to the BLCPP Property Owners Association (POA). Assigning the maintenance agreements to the POA will facilitate a smooth transition of these obligations to the POA.

The Committee discussed the assignment of the maintenance agreements to the POA. Mr. Mehaffy requested that staff consult with Commissioner Finn and made a motion to recommend, subject to that consultation, that the BUDC Board (i) approve the assignment of the maintenance agreements to the POA; (ii) approve the issuance of a notice of termination of the maintenance agreements; and (iii) authorize the BUDC President and Executive Vice President to execute such documents and take such actions as are necessary to implement these actions. The motion was seconded by Ms. Curry and unanimously carried (5-0-0).

- (b) Various Parcels – Zephyr Investors LSA Due Diligence Extension** – Ms. Merriweather presented her August 24, 2021 memorandum regarding the request of Zephyr Investors, LLC for an additional extension of the due diligence period under the Land Sale Agreement. The due diligence period with respect to the Land Sale Agreement between BUDC and Zephyr currently runs through September 30, 2021. Zephyr has proposed that the due diligence period be extended until the earlier of either July 31, 2022, or 120 days from the date that Zephyr obtains its MRTA license. In consideration for the proposed extension, Zephyr has offered to pay a non-refundable monthly extension fee to BUDC in the amount of \$1,000 per month of the extended due diligence period. The fees will not be applied as a credit against the purchase price at closing. Zephyr has also requested an option for an additional one-year extension of the due diligence period through July 31, 2023 due to the present uncertainty regarding MRTA licensing requirements. If this extension is utilized, Zephyr would make \$3,000 monthly exclusivity fee payments from August 1, 2022 through December 31, 2022 and \$7,500 monthly exclusivity fee payments for the period from January 1, 2023 through July 31, 2023. Zephyr has also agreed to deliver an additional \$67,000 deposit on August 1, 2022 which will be held in escrow. Ms. Merriweather noted that the proposed extension was discussed with the BUDC Board at the July 2021 meeting; however, due to the lack of quorum, formal action could not be taken. In the interim, BUDC issued a letter providing for a short-term interim 60-day extension of the due diligence period through September 30, 2021.

After a discussion, Mr. Kucharski made a motion recommending that the Board of Directors: (i) ratify the 60-day extension of the due diligence period; (ii) approve the extension of the due diligence period consistent with the terms outlined in the August 24, 2021 memorandum and such additional terms as may be negotiated by the President and Executive Vice President; and (iii) authorize the President and Executive Vice President to execute an amendment to the Agreement and take such other actions as are necessary or appropriate to implement this action. The motion was seconded by Mr. Penman and unanimously carried (4-0-0). Ms. Curry was not present for this vote.

- (c) 255 Ship Canal Parkway LSA – Uniland LSA Update** – Mr. Zanner reported that Judge Ward dismissed Sonwil's Article 78 proceeding due to Sonwil's lack of standing to bring the claim. He noted that Sonwil has the right to appeal the decision but has not done so to date. Ms. Gandour then reported to the Committee that the land sale with Uniland closed on August 20, 2021.
- (d) 193 Ship Canal Parkway - Prospect Update** – Ms. Gandour reported that a prospect is engaged in ongoing discussions with NYSDEC and Benchmark regarding the Brownfield Cleanup Program for this site.

(e) **NYSDOT Skyway Alternatives Study** – Presentation of this item was deferred to the August 2021 Committee meeting.

4.0 **308 Crowley Project Update** – Ms. Merriweather reported that demolition at the site is moving forward. Community feedback regarding the demolition work has been very positive. Phase I of the demolition is expected to continue through October 2021. The City and BUDC are pursuing funding for Phase 2 of the demolition work.

5.0 **Adjournment** – There being no further business to come before the Committee, upon motion made by Mr. Kucharski, seconded by Ms. Curry and unanimously carried, the August 24, 2021 meeting of the Real Estate Committee was adjourned at 12:48 p.m.

Respectfully submitted,



Kevin J. Zanner
Secretary