

Buffalo Urban Development Corporation

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**Buffalo Urban Development Corporation
Real Estate Committee Meeting**

**Tuesday, December 13, 2022 at 12:00 p.m.
95 Perry Street, 4th Floor Vista Room**

Agenda

- 1) Approval of Minutes – Meeting of October 18, 2022 (*Approval*) (*Enclosure*)
- 2) Northland Beltline Corridor
 - a) Northland Central – Phase I Construction Additional HVAC Work Claim Update (*Information*)
 - b) Northland Corridor – Tenant & Property Management Updates (*Information*)
 - c) Northland Corridor – 612 Northland Lease Discussion (*Information/Recommendation*)
 - d) Northland Corridor – Build Back Better Challenge Grant (*Information*)
- 3) Buffalo Lakeside Commerce Park
 - a) 193 Ship Canal Parkway Update (*Information*)
 - b) 80, 134, 158 and 200 Ship Canal Parkway Update (*Information*)
 - c) 315 Ship Canal Parkway Litigation Update (*Information*) (*Enclosure*)
 - d) Buffalo Lakeside Commerce Park Property Owners Association (*Information*)
- 4) Executive Session
- 5) Adjournment (*Approval*)

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

**95 Perry Street
Buffalo, New York
October 18, 2022
12:00 p.m.**

Committee Members Present:

Elizabeth A. Holden
Brendan R. Mehaffy
Kimberley A. Minkel, Chair
Dennis M. Penman

Committee Members Absent:

Janique S. Curry
Thomas A. Kucharski

Officers Present:

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

Guests Present: Zaque Evans, Senior Economic Development Specialist, Erie County Executive's Office; Alexis M. Florczak, Hurwitz Fine P.C.; Soma Hawramee, ECIDA Compliance Officer; Thomas Mancuso, Mancuso Business Development Group; Antonio Parker, BUDC Project Manager; and Paul Tronolone, Empire State Development.

Roll Call: The meeting was called to order at 12:05 p.m. A quorum of the Committee was determined to be present.

1.0 Approval of Minutes – Meeting of August 23, 2022 – The minutes of the August 23, 2022 Real Estate Committee meeting were presented. Mr. Penman made a motion to approve the meeting minutes. The motion was seconded by Mr. Mehaffy and unanimously carried (4-0-0).

2.0 Northland Beltline Corridor

(a) Northland Central – Phase I Construction Additional HVAC Work Claim Update
Mr. Zanner updated the Committee regarding the HVAC claim, and reported that a settlement proposal was recently presented to defense counsel.

(b) Northland Corridor – Tenant & Property Management Updates – Mr. Mancuso presented the Northland Corridor tenant and property management updates. The seasonal security escort project will begin on October 31st, with Retech and Buffalo Manufacturing Works participating. Manna is bottling its mint tea for sale in grocery stores, which will provide an additional revenue stream for its business. The Albright Knox Art Gallery (AKAG) remains on target for vacating 612 Northland at the end of November. Mr. Mancuso reported that a lightning

strike occurred at Northland on September 26th. While the building's suppression system defused the lightning strike and no structural damage occurred, the fire and security systems were impacted. Currently, these systems are approximately 85-90% back online. Participants in the UB Masters in Real Estate Development program recently visited the Northland Campus. The students are working on a project that focuses on adaptive reuse and manufacturing and includes a component relating to the Central Terminal.

- (c) **Northland Corridor – Build Back Better Challenge Grant Update** – Ms. Gandour informed the Committee that BUDC executed the grant agreement with the Economic Development Administration (EDA) and is setting up the required financial accounts for the grant. Grant management documents and a request for proposals (RFP) for architectural and engineering services are being drafted in consultation with ESD and Bisonwing Consulting. It is anticipated that the RFP will be released by the end of the year. Discussions with ESD are ongoing regarding matching funds for the grant.

3.0 Buffalo Lakeside Commerce Park

- (a) **193 Ship Canal Parkway – Prospect Update** – Ms. Gandour reported that Krog is current on its payments under the exclusivity agreement for this site. No additional information regarding Krog's prospective tenant has been received since the last Committee meeting.
- (b) **80, 134, 158 and 200 Ship Canal Parkway** – Ms. Gandour reported that Savarino is current on its payments under the exclusivity agreement for this site. Savarino is in discussions with several industrial tenants and requested that BUDC circulate a proposed land sale agreement. BUDC is seeking further information regarding Savarino's project which is needed for the land sale agreement.
- (c) **Buffalo Lakeside Commerce Park Property Owners Association** – Ms. Gandour reported that a meeting of the Board of Directors of the BLCP Property Owners Association (POA) will take place immediately following this meeting to discuss the POA budget and changes to property assessments resulting from the recent land sale to Zephyr and the improvements made to some of the lots.

- 4.0 Executive Session** – Mr. Penman made a motion for the Committee to enter into executive session to discuss the proposed lease of 612 Northland on the basis that public discussion of the proposed transaction would substantially affect the value of the property. The motion was seconded by Mr. Mehaffy and unanimously carried (4-0-0). At the conclusion of the executive session, Mr. Mehaffy made a motion to exit executive session, which was seconded by Ms. Holden and unanimously carried (4-0-0). Mr. Penman then made a motion to recommend that the BUDC Board of Directors authorize NorDel I, LLC to enter into a lease with Zephyr for 612 Northland upon the terms discussed in executive session, including the contingency that Zephyr execute a memorandum of understanding with the Northland Workforce Training Center no later than December 1, 2022. The motion was seconded by Mr. Mehaffy and unanimously carried (4-0-0).

- 5.0 Adjournment** – There being no further business to come before the Committee, on motion made by Ms. Holden, seconded by Mr. Mehaffy and unanimously carried, the October 18, 2022 meeting of the Real Estate Committee was adjourned at 12:27 p.m.

Respectfully submitted,

Kevin J. Zanner
Secretary

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 21-01228

PRESENT: WHALEN, P.J., SMITH, CENTRA, WINSLOW, AND BANNISTER, JJ.

IN THE MATTER OF 315 SHIP CANAL PARKWAY, LLC,
AND SONWIL DISTRIBUTION CENTER, INC.,
PETITIONERS-APPELLANTS,

V

MEMORANDUM AND ORDER

BUFFALO URBAN DEVELOPMENT CORPORATION AND
UNILAND DEVELOPMENT COMPANY,
RESPONDENTS-RESPONDENTS.

ZDARSKY, SAWICKI & AGOSTINELLI LLP, BUFFALO (GERALD T. WALSH OF
COUNSEL), FOR PETITIONERS-APPELLANTS.

HURWITZ & FINE, P.C., BUFFALO (ANDREA SCHILLACI OF COUNSEL), FOR
RESPONDENT-RESPONDENT BUFFALO URBAN DEVELOPMENT CORPORATION.

WOODS OVIATT GILMAN LLP, BUFFALO (BRIAN D. GWITT OF COUNSEL), FOR
RESPONDENT-RESPONDENT UNILAND DEVELOPMENT COMPANY.

Appeal from a judgment (denominated order) of the Supreme Court, Erie County (Dennis E. Ward, J.), entered August 19, 2021 in a proceeding pursuant to CPLR article 78. The judgment dismissed the amended petition.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: This matter involves the sale of real property by respondent Buffalo Urban Development Corporation (BUDC) to respondent Uniland Development Company (Uniland). In December 2020, BUDC and Uniland executed a third amendment to their land sale agreement (LSA) approving the expansion of the term "Project" under the LSA to include a ground-mounted photovoltaic solar energy system in lieu of an office or warehouse. Petitioners commenced this CPLR article 78 proceeding seeking to annul BUDC's determination with respect to the LSA use modification and proposed disposition of the property. Petitioners now appeal from a judgment that dismissed their amended petition for lack of standing.

We agree with respondents that the appeal should be dismissed as moot (see generally *Matter of Citineighbors Coalition of Historic Carnegie Hill v New York City Landmarks Preserv. Commn.*, 2 NY3d 727, 728-729 [2004]; *Matter of Sierra Club v New York State Dept. of Envtl. Conservation*, 169 AD3d 1485, 1486 [4th Dept 2019]). "Litigation over

construction is rendered moot when the progress of the work constitutes a change in circumstances that would prevent the court from rendering a decision that would effectively determine an actual controversy" (*Sierra Club*, 169 AD3d at 1486 [internal quotation marks omitted]). When evaluating claims of mootness, courts consider several factors and "[c]hief among [those factors] has been a challenger's failure to seek preliminary injunctive relief or otherwise preserve the status quo to prevent construction from commencing or continuing during the pendency of the litigation" (*Matter of Dreikausen v Zoning Bd. of Appeals of City of Long Beach*, 98 NY2d 165, 173 [2002]). "Factors weighing against mootness may include whether a party proceeded in bad faith and without authority," whether "novel issues or public interests such as environmental concerns warrant continuing review," and whether "a challenged modification is readily undone, without undue hardship" (*id.* [internal citations omitted]). Here, petitioners never moved for a preliminary injunction, or otherwise sought to preserve the status quo, pending the outcome of the proceeding (see *Citineighbors Coalition of Historic Carnegie Hill*, 2 NY3d at 729; *Dreikausen*, 98 NY2d at 173; *Sierra Club*, 169 AD3d at 1486-1487; cf. *Town of N. Elba v Grimditch*, 131 AD3d 150, 157 [3d Dept 2015], lv denied 26 NY3d 903 [2015]), "nonfeasance that they chalk up to . . . the unlikelihood of success" (*Citineighbors Coalition of Historic Carnegie Hill*, 2 NY3d at 729). Moreover, Uniland has established that construction of the solar energy field, which is nearly complete, was not performed in bad faith or without authority (see *id.*; *Sierra Club*, 169 AD3d at 1487; cf. *Town of N. Elba*, 131 AD3d at 157), and that the work cannot readily be undone without substantial hardship (see *Sierra Club*, 169 AD3d at 1487). Finally, the exception to the mootness doctrine does not apply here (see *Citineighbors Coalition of Historic Carnegie Hill*, 2 NY3d at 730).

Entered: November 10, 2022

Ann Dillon Flynn
Clerk of the Court