

Buffalo Urban Development Corporation

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Buffalo Urban Development Corporation



Buffalo Urban Development Corporation Real Estate Committee Meeting

Tuesday, August 24, 2021 at Noon
95 Perry Street – 5th Floor, Boardroom

Agenda

- 1) Approval of Minutes – Meeting of July 20, 2021 (*Approval*) (*Enclosure*)
- 2) Northland Beltline Corridor (*All Are Information Items*)
 - a) Northland Central – NWTC / ESD / BUDC Memorandum of Understanding Update
 - b) Northland Central – LEED Certification /NYSERDA Update
 - c) Northland Central – Phase I Construction Additional HVAC Work Claim Update
 - d) Northland Corridor – 714 Northland Tenant Update
 - e) Northland Corridor – Other Tenant & Property Management Updates
 - f) Northland Corridor – Misc. Project Management Updates (Community Solar/Microgrid, BOA, 631 Northland, 541 E. Delavan, LISC, Albright Knox Northland)
- 3) Buffalo Lakeside Commerce Park
 - a) Canal Park Maintenance Agreement and Canal Bridge Maintenance Agreement (*Recommendation*)
 - b) Various Parcels – Zephyr Investors LSA Due Diligence Extension (*Recommendation*)
 - c) 255 Ship Canal Parkway – Uniland LSA Update (*Information*)
 - d) 193 Ship Canal Parkway - Prospect Update (*Information*)
 - e) NYSDOT Skyway Alternatives Study (*Information*)
- 4) 308 Crowley Project Update (*Information*)
- 5) Adjournment (*Approval*)

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

**95 Perry Street
Buffalo, New York
July 20, 2021
12:00 p.m.**

Committee Members Present:

Janique S. Curry
Thomas A. Kucharski
Brendan R. Mehaffy
Dennis M. Penman

Committee Members Absent:

Kimberley A. Minkel
Craig A. Slater, Chair
Maria R. Whyte

Officers Present:

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

Guests Present: Peter Cammarata, Cammarata Consulting, LLC; Alexis M. Florczak, Hurwitz & Fine, P.C.; Arthur Hall, Senior Project Manager, BUDC; Thomas Mancuso, Mancuso Business Development Group; Aaron Schauger, LaBella Associates; and Deb Zarbo, Frey Electric.

Roll Call: The meeting was called to order at 12:18 p.m. The Secretary confirmed that a quorum of the Committee was present. Agenda Items 1.0 and 3(a) were presented first. Mr. Mehaffy left the meeting during the presentation of Item 3(a), and a quorum was no longer present.

1.0 Approval of Minutes – Meeting of June 22, 2021 – The minutes of the June 22, 2021 Real Estate Committee meeting were presented. Mr. Kucharski 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** – Ms. Gandour reported that an updated equipment list is needed for the MOU and is being worked on by the parties.
- (b) Northland Central – LEED Certification/NYSERDA Update** – Mr. Hall reported that the achievement of LEED silver status for 683 Northland, which will result in additional funding for the project.
- (c) Northland Central – Phase I Construction Additional HVAC Work Claim Update** – Mr. Zanner reported that a summons with notice was prepared and served upon Watts

Architecture and Engineering and Popli Design Group relating to BUDC's claims for the defective design of the Phase I HVAC system at Northland Central.

- (d) **Northland Corridor – Community Solar & Microgrid Project Updates** – Ms. Gandour introduced representatives from Frey Electric and LaBella Associates for a presentation on the Community Solar & Microgrid Project at Northland Central. Ms. Zarbo provided an overview of the project to increase the energy capacity at the Northland campus. The project is currently in the pre-development phase. Ms. Zarbo went on to discuss the load study, which determined the current grid capacity at the campus is greater than the team had initially thought. The study also showed that the average electric use for the campus was 0.7MW and rarely exceeds 1.0MW for extended periods of time. Ms. Zarbo explained that the load study indicates that the energy capacity of the campus may not need to be upgraded, and that the funds that were allocated could be used instead towards other renewable energy elements of the project. Ms. Zarbo also discussed the solar roof elements of the project, reporting that the solar roof panels will offset 25% of the building's current energy usage.

Mr. Schauger then presented an update regarding the FlexTech Energy Study, which will be completed at the end of September 2021. Electric performance at the campus is being monitored throughout the course of the study, which will help determine options for future expansions and cost-effectiveness. Mr. Schauger also discussed the pre-development phase milestones that have been achieved and will be achieved in the upcoming months and noted the final report from the study is anticipated to be complete in October 2021.

- (e) **Northland Corridor – Broker Opinion of Value & Tenant & Property Management Updates** – Mr. Mancuso presented a report to the Committee on the broker opinion values with respect to BUDC's properties in the Northland Corridor. With respect to the property at 612 Northland, the A building was valued at \$4.75 to \$6.00 per square foot. BUDC is currently receiving \$3.82 per square foot under the existing lease for this space, which is consistent with the fair market rent study completed several years ago. Mr. Mancuso noted that the B building at 612 Northland is unfinished, and comparable sites were challenging to find. The broker opinion of value for the B building is a range of between \$2.50-3.60 per square foot. BUDC is currently receiving \$2.60 per square foot under the existing lease for this space. A broker opinion of value was also presented for 714 Northland, which is up for renewal. This property was valued at \$4.00-\$4.75 per square foot. BUDC is currently receiving \$3.85 per square foot under the existing lease for this property.

- (f) **Northland Corridor – Misc. Project Management Updates** – Mr. Hall presented the following Northland Corridor updates to the Committee:

683 Northland Central: The NTCIC Community Investment Report, a biennial requirement of the New Markets tax credits program, is being prepared and is due in early August 2021.

612 Northland: Albright Knox's latest exhibit, "Herve Tullet: Shape and Color," is underway and runs through September 12th.

714 Northland: Albright Knox continues to make progress on the mural for 714 Northland. Painting work is expected to begin in early August.

537/541 E. Delavan: BUDC is working with CCLR to create informational sheets for this property.

Neighborhood Planning and Development: BUDC continues to await a response from the NYSDOS regarding the Northland Beltline BOA and will move to next steps once feedback is received.

Community Outreach: BUDC staff has received several resident responses from the information boxes that have been established around Northland and are reviewing potential opportunities to implement ideas from the public.

Business Network Services: BUDC staff is meeting with the Network Series Team on July 21st to discuss updates to the series. Rodriguez Construction will be involved in the next program, which is expected to focus on assisting small businesses in the construction industry.

- (g) **1669 Fillmore – LaBella UST Closure Services Update** – Mr. Cammarata updated the Committee on the tank removal project that was completed two months ago. BUDC recently received a favorable report from NYSDE indicating that the no additional remediation work was needed. Mr. Cammarata also noted that the grant received from National Grid paid for nearly the entire cost relating to the removal of additional tanks.

3.0 Buffalo Lakeside Commerce Park

- (a) **Various Parcels – Zephyr Investors LSA Due Diligence Extension**– Ms. Gandour updated the Committee on a request from Zephyr Investors for a two-year extension of the due diligence period under the Land Sale Agreement. Mr. Zanner reviewed the proposed terms of the amendment, which remain under negotiation by the parties. A non-refundable monthly extension fee of \$1000 has been proposed. The developer has suggested that certain covenants under the LSA should be deemed satisfied once the developer commenced construction of a building of up to 50,000 square feet to be used for cannabis and other industrial uses. A lengthy discussion ensued. During the discussion, Mr. Mehaffy left for another meeting, at which time there was no longer a quorum of the Committee. The remaining Committee members expressed that given the number of open issues, a short-term extension of the due diligence period with no other changes to the LSA would be appropriate to present to the Board. This would allow the parties sufficient time to complete the negotiation.
- (b) **255 Ship Canal Parkway LSA – Uniland LSA Update** – Mr. Zanner reported that a hearing on Sonwil’s Article 78 petition has been rescheduled for July 29, 2021.
- (c) **193 Ship Canal Parkway - Prospect Update** – Mr. Cammarata reported that the NYSDEC is willing to subdivide the parcel so that the prospect can proceed with its project in two phases.
- (d) **NYS DOT Skyway Alternatives Study** – Presentation of this item was deferred to the August 2021 Committee meeting.

- 4.0 **308 Crowley Project Update** – Mr. Cammarata reported that a fire at the property caused considerable damage, including to a common wall with Enterprise Folding Box. Emergency demolition work was required. The remaining Phase 1 demolition work is still moving forward. The City of Buffalo is seeking additional funding for the Phase 2 demolition work, which is anticipated to cost approximately \$1,000,000. Following the completion of the demolition work, it is anticipated that BUDC will reconfigure the fencing on the property and address easement issues with respect to the building to the south of the property.

- 5.0 **Other Business**– Ms. Gandour reported on a matter involving the Buffalo Brownfields Redevelopment Fund (BBRF). ECIDA recently approved Sonwil’s application for a PILOT incentive for its second building at Buffalo Lakeside Commerce Park. BUDC worked with ECIDA and Sonwil

to ensure that the PILOT structure will follow the requirements of the BBRF program, which will result in a portion of the PILOT revenues from this project being redirected to the BBRF.

6.0 Adjournment – There being no further business to come before the Committee, the July 20, 2021 meeting of the Real Estate Committee was adjourned at 1:31 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Zanner', written in a cursive style.

Kevin J. Zanner
Secretary

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Item 3A

MEMORANDUM

TO: BUDC Real Estate Committee

FROM: Rebecca Gandour, BUDC Executive Vice President

SUBJECT: Canal Park and Canal Bridge Maintenance Agreements

DATE: August 24, 2021

As part of the redevelopment of Union Ship Canal, the City of Buffalo (City), County of Erie and Buffalo Urban Development Corporation developed Ship Canal Commons, a public open space surrounding Union Ship Canal that includes park-like amenities and a pedestrian bridge, for the use and benefit of the public.

In October of 2011, the City and BUDC entered into a Canal Park Maintenance Agreement and a Canal Bridge Maintenance Agreement (the “Maintenance Agreements”) with respect to Ship Canal Commons. Under the Maintenance Agreements, BUDC is responsible for property maintenance and the City is responsible for property repairs. The agreements require BUDC to pay for items such as insurance, utilities, landscaping, canal and bridge lamps and fixtures, litter, graffiti, and trash removal. Over the past ten years, BUDC has incurred almost \$1.5 million in costs under the maintenance agreements.

The term of the Maintenance Agreements is ten years. Both agreements are scheduled to expire on October 28, 2021. The City may extend the term of the Maintenance Agreements for two additional five-year renewals. However, after the initial ten-year term, either party may terminate the Maintenance Agreements upon at least one-year written notice to the other party.

BUDC’s responsibility to perform maintenance obligations at Ship Canal Commons was not intended to be a long-term obligation. The plan for the maintenance of Ship Canal Commons was for the maintenance obligations to be assigned the Buffalo Lakeside Commerce Park Property Owners Association (the “POA”), a not-for-profit corporation that was formed for that specific purpose. This

association is to be comprised of all of the landowners at BLCP (excepting Sonwil, CertainTeed and Cobey, whose projects preceded the formation of the POA structure). To date, the only member of the POA is BUDC, as no land sales have closed since the Declaration of Covenants for BLCP was filed in 2015. However, with pending land sales to Uniland and Zephyr Investors, the maintenance costs will be shared with these two new landowners, who will automatically become members of the POA upon the closing of the sale of the properties. Assigning the Maintenance Agreements to the POA in advance of these closings will facilitate a smooth transition of these obligations to the POA.

We are also asking that the Committee authorize BUDC, directly or through the POA to issue a one-year notice of termination of the Maintenance Agreements should the City notify BUDC or the POA of its intention to extend the term of the agreements as the POA structure would be in place and responsible for park maintenance. Bridge maintenance would transfer to the City.

ACTION

I am requesting that the BUDC Real Estate Committee recommend that the BUDC Board of Directors (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 or BUDC Executive Vice President to execute such documents and take such actions as are necessary to implement these actions.

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Item 3B

MEMORANDUM

TO: BUDC Real Estate Committee

FROM: Brandye Merriweather, BUDC President

SUBJECT: Zephyr Investors, LLC Land Sale Agreement—Extension of Due Diligence Period

DATE: August 24, 2021

The due diligence period with respect to the Land Sale Agreement (the “Agreement”) between BUDC and Zephyr Investors, LLC (“Zephyr”) currently runs through September 30, 2021. Zephyr has requested an additional extension of the due diligence period in order to obtain an operating license under the Marijuana Regulation and Taxation Act (the “MRTA License”).

Zephyr is proposing that the due diligence period be extended until the earlier of the first to occur: (i) July 31, 2022 or (ii) 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 for each month of the extended due diligence period. The monthly extension fees will not be applied as a credit against the purchase price at closing.

Given the present uncertainty regarding MRTA licensing requirements, Zephyr has also requested that the LSA be amended to include a provision that would permit Zephyr an additional one-year extension of the due diligence period through July 31, 2023. This extension, if utilized, would result in Zephyr making \$3000 monthly exclusivity fee payments from August 1, 2022 through December 31, 2022 and \$7500 monthly exclusivity fee payments for the period from January 1, 2023 through July 31, 2023. Zephyr has agreed to deliver the additional \$67,000 deposit on August 1, 2022 which will be held in escrow.

This item was discussed with the BUDC Board at the July 27th, 2021 meeting, but due to the lack of quorum formal action could not be taken. In the interim, BUDC issued a letter to Zephyr providing for a short-term 60-day extension of the due diligence period as the due diligence period was set to expire July 31, 2021.

ACTION:

We are requesting that the BUDC Real Estate Committee recommend (i) ratification of the short-term 60-day extension of the due diligence period (ii) the extension of the due diligence period consistent with the terms outlined in this memorandum and such additional terms as may be negotiated by the President and Executive Vice President (iii) and to authorize the President or Executive Vice President to execute an amendment to the Agreement and take such other actions as are necessary or appropriate to implement this action.