

# Buffalo Urban Development Corporation

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## **Buffalo Urban Development Corporation** **Board of Directors Meeting**

**Date: Tuesday, August 31, 2021**

**Time: 12 Noon**

**Place: BUDC Offices**  
**95 Perry Street – 5<sup>th</sup> Floor Board Room**  
**Buffalo, NY**

### **1.0 CALL TO ORDER**

### **2.0 READING OF THE MINUTES** *(Action) (Enclosure)*

### **3.0 MONTHLY FINANCIAL REPORTS** *(Handouts to Be Distributed)*

3.1 683 Northland Master Tenant, LLC Financial Statements *(Information)*

3.2 BUDC Consolidated Financial Statements *(Action)*

### **4.0 NEW BUSINESS**

4.1 Ralph C. Wilson, Jr. Centennial Park - Edith Wilson and Linda Bodgan Garden & Tennis Fund of the Community Foundation for Southeast Michigan Award  
*(Action)(Enclosure)*

4.2 Ralph C. Wilson, Jr. Centennial Park – SJB Contract Amendment *(Action)(Enclosure)*

4.3 Buffalo Lakeside Commerce Park - Zephyr Investors LSA Due Diligence Extension  
*(Action)(Enclosure)*

4.4 Buffalo Lakeside Commerce Park - Canal Park and Canal Bridge Maintenance Agreements *(Action)(Enclosure)*

4.5 Buffalo Lakeside Commerce Park - Project Update *(Information)*

4.6 Ralph C. Wilson, Jr. Centennial Park - Project Update *(Information)*

4.7 Northland Beltline Corridor Update *(Information)*

4.8 Race For Place Project Update *(Information)*

4.9 308 Crowley Project Update *(Information)*

### **5.0 LATE FILES**

### **6.0 TABLED ITEMS**

### **7.0 EXECUTIVE SESSION**

### **8.0 ADJOURNMENT** *(Action)*

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

**95 Perry Street  
Buffalo, New York  
June 29, 2021  
12:00 p.m.**

Directors Present:

Mayor Byron W. Brown (Chair)  
Trina Burruss  
James Comerford  
Janique S. Curry  
Dennis W. Eisenbeck  
Thomas Halligan  
Thomas A. Kucharski  
Amanda Mays  
Brendan R. Mehaffy  
Kimberley A. Minkel  
David J. Nasca  
Dennis M. Penman (Vice Chair)  
Darius G. Pridgen

Directors Absent:

Michael J. Finn  
Darby Fishkin  
Dottie Gallagher  
Craig A. Slater  
Maria R. Whyte

Officers Present:

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

Guests Present: Tuona Batchelor, Erie County Environment & Planning; Peter M. Cammarata, Cammarata Consulting, LLC; Jonathan D. Epstein, *The Buffalo News*; Alexis M. Florczak, Hurwitz & Fine, P.C.; Arthur Hall, BUDC Senior Project Manager; and Jamee Lanthier, ECIDA Compliance Officer.

- 1.0** **Roll Call** – The Chair called the annual meeting of the Board of Directors to order at 12:23 p.m. The Secretary called the roll and a quorum of the Board was determined to be present.
- 2.0** **Approval of Minutes – Meeting of May 25, 2021** – The minutes of the May 25, 2021 meeting of the Board of Directors were presented. Mr. Penman made a motion to approve the meeting minutes. The motion was seconded by Ms. Minkel and unanimously carried (13-0-0).
- 3.0** **Monthly Financial Reports** – Ms. Profic presented for information purposes the financial statements for 683 Northland Master Tenant, LLC for the period ending May 31, 2021. She then presented the consolidated financial statements for BUDC and its affiliates, 683 Northland LLC and 683 WTC, LLC for the period ending May 31, 2021. Mr. Nasca made a motion to accept the BUDC consolidated financial statements. The motion was seconded by Mr. Comerford and unanimously carried (13-0-0).

#### 4.0 **New Business**

**4.1 Re-appointment of Three Citizen Members** – Mayor Brown presented his June 29, 2021 memorandum to the Board announcing his re-appointment of Trina Burruss, Janique Curry and Thomas Halligan as citizen-members and directors of BUDC. Each appointment is for a term of three years.

**4.2 2021-2022 Committee Appointments** – Ms. Merriweather presented the proposed slate of Committee appointments for 2021-2022. She noted that Ms. Mays has volunteered to join the Downtown Committee. Mr. Kucharski made a motion to approve the proposed slate of Committee appointments. The motion was seconded by Mr. Pridgen and unanimously carried (13-0-0). The Committee appointments made by the Board for July 2021 - June 2022 are as follows:

**Downtown Committee:** Trina Burruss; James W. Comerford; Michael Finn; Darby Fishkin, Dottie Gallagher; Amanda Mays; Brendan R. Mehaffy (*Committee Chair*); Kimberley A. Minkel; and Darius G. Pridgen.

**Governance Committee:** Hon. Byron W. Brown; Dennis W. Eisenbeck; Thomas Halligan; Thomas A. Kucharski (*Committee Chair*); Amanda Mays; Brendan R. Mehaffy; and Dennis M. Penman.

**Audit & Finance Committee:** Trina Burruss; James W. Comerford; Janique S. Curry; David J. Nasca; and Dennis M. Penman (*Committee Chair*).

**Real Estate Committee:** Janique S. Curry; Thomas A. Kucharski; Brendan R. Mehaffy; Kimberley A. Minkel; Dennis M. Penman; Craig A. Slater (*Committee Chair*); and Maria R. Whyte.

**Loan Committee:** Dottie Gallagher; and Brendan R. Mehaffy (*Committee Chair*).

**4.3 2021-2022 Election of Officers** – Mr. Kucharski presented the following proposed slate of officers of BUDC as set forth in his June 29, 2021 memorandum to the Board of Directors:

Chair:	Hon. Byron W. Brown
Vice Chair:	Dennis M. Penman
President:	Brandye Merriweather
Vice President:	Rebecca Gandour
Treasurer:	Mollie M. Profic
Assistant Treasurer:	Atiqa Abidi
Secretary:	Kevin J. Zanner, Esq.

Upon motion made by Mr. Kucharski, seconded by Ms. Curry and unanimously carried (13-0-0), the foregoing slate of officers was approved, with each officer to serve a term of one (1) year and until his or her successor has been elected or appointed. Mr. Pridgen left the meeting following the presentation and vote on this item.

**4.4 683 Northland Avenue - Extension of KeyBank Bridge Financing Facilities** – Ms. Gandour presented her June 29, 2021 memorandum regarding the extension of the KeyBank bridge financing facilities. As part of the 683 Northland tax credits transaction, the BUDC Board of Directors previously authorized 683 Northland LLC to borrow \$30,000,000 from KeyBank as construction bridge financing for the project. The balance due on this loan is \$10,180,810. A

\$1,000,000 line of credit was subsequently obtained through KeyBank which was needed due to delays associated with receipt of tax credit equity installments and BCP tax refund payments. The current balance on the line of credit is \$662,099. Ms. Gandour stated that BUDC staff has been working with KeyBank to extend the term of the construction bridge loan and draw period under the line of credit through December 31, 2022. KeyBank has issued two term sheets for the extensions. Ms. Gandour reviewed the extension terms as outlined in her June 29, 2021 memorandum. She noted that KeyBank also agreed, following a request from BUDC staff, to waive the \$5000 line of credit extension fee and reduce the interest rate on the line of credit by one-half percent (½%) to LIBOR plus 2.25%.

Mr. Penman made a motion to: (i) approve an 18-month extension of the KeyBank construction bridge loan in accordance with the KeyBank term sheet and upon such additional terms and conditions as the President or Executive Vice President determine are commercially reasonable and consistent with the term sheet; (ii) approve an 18-month extension of the draw period for the KeyBank line of credit in accordance with the KeyBank term sheet and upon such additional terms and conditions as the President or Executive Vice President determine are commercially reasonable and consistent with the term sheet; and (iii) authorize the President or Executive Vice President to execute and deliver such agreements and documents and to take such actions on behalf of 683 Northland, LLC, BUDC and any related BUDC entities as may be reasonably necessary or appropriate to implement this action. The motion was seconded by Ms. Curry and carried with ten affirmative votes (10-0-2). Mr. Nasca and Ms. Minkel abstained from voting on this item.

**4.5 Northland Central – Phase I Construction Additional HVAC Work Claim** – Mr. Kucharski made a motion for the Board to enter into executive session to discuss claims and litigation strategy relating to the design of the Phase 1 HVAC system at Northland Central. The motion was seconded by Ms. Minkel and unanimously carried (12-0-0). Mr. Zanner briefed the Board on potential claims and litigation strategy relating to the defective design of the Phase I HVAC system at Northland Central. At the conclusion of the discussion, Mr. Eisenbeck made a motion to authorize legal action against Watts Architecture and Engineering and Popli Design Group for the defective design of the Phase I HVAC system. The motion was seconded by Ms. Minkel and unanimously carried (12-0-0). Mr. Kucharski then made a motion to exit executive session, which was seconded by Mr. Comerford and unanimously carried (12-0-0).

**4.6 Ralph C. Wilson, Jr. Centennial Park – Great Lakes Commission Funding Agreement #2** – Ms. Merriweather presented her June 29, 2021 memorandum regarding the second Great Lakes Commission (GLC) grant funding agreement. GLC has approximately \$238,000 in additional funding available to award BUDC for additional work and analysis for the inlet portion of Ralph C. Wilson, Jr. Centennial Park. It is anticipated that the grant agreement for these funds will include terms similar to those set forth in the first grant agreement entered into by BUDC and GLC, including federal grant requirements of the United States Department of Commerce, which BUDC will pass on to MVVA through an amendment to the Master Service Agreement detailing these requirements. Mr. Nasca made a motion to: (i) approve the acceptance by BUDC of an approximately \$238,000 grant from the Great Lakes Commission to pay for design costs associated with respect to the inlet restoration at Ralph C. Wilson, Jr. Centennial Park; (ii) authorize each of the President and Executive Vice President to execute a grant agreement with GLC; (iii) authorize each of the President and Executive Vice President to execute an amendment to the Master Service Agreement with MVVA in order to pass through the GLC grant obligations to MVVA; and (iv) take such other actions as are necessary or appropriate to implement this authorization. The motion was seconded by Ms. Mays and unanimously carried (12-0-0).

**4.7 Buffalo Lakeside Commerce Park – Zephyr Investors LSA Due Diligence Extension** – Ms. Merriweather requested that this item be tabled for additional input from the Real Estate

Committee. Mr. Penman made a motion to table the item, which was seconded by Mr. Mehaffy and unanimously carried (12-0-0).

**4.8 Waterfront/RCWJ Centennial Park – Project Update** – Ms. Gandour noted that construction documents have been started for construction package one, primarily relating to core Park components. BUDC is working on an application to obtain additional funding for the playfields and shoreline elements of the Park. Ms. Merriweather added that the Park conservancy, which was formed to address long term maintenance and sustainability of the Park, recently held its first meeting.

**4.9 Buffalo Lakeside Commerce Park – Project Update** - Updates on Buffalo Lakeside Commerce Park were presented as follows:

Prospect at 193 Ship Canal Parkway: Mr. Cammarata reported that BUDC is working with the NYSDEC and the prospect regarding a proposal to subdivide the parcel to help reduce Brownfield Cleanup Program remediation costs. Mr. Slater is assisting the prospect with the BCP process.

Zephyr LSA: Mr. Cammarata noted that the due diligence period under the Land Sale Agreement with Zephyr runs through July 31, 2021.

Sonwil/255 Ship Canal Parkway: Mr. Zanner reported that the court adjourned the hearing on Sonwil's Article 78 claim to July 13<sup>th</sup>.

Security at BLCF: Mr. Cammarata noted that Art Hall is working with the Buffalo Police Department (BPD) on security issues relating to dirt bikes and 4-wheel vehicles at BLCF. Mayor Brown added that the BPD recently confiscated approximately 40 ATVs.

**4.10 Northland Beltline Corridor - Project Update** – Mr. Hall presented the Northland Beltline Corridor Project update as follows:

683 Northland Central: Bank on Buffalo, Northland Workforce Training Center and the Community Health Center of Buffalo partnered to offer free COVID-19 vaccines to the community and to discuss social determinants of health with attendees. An additional clinic is expected to be scheduled. The decorative fence at Manna has been installed and is complete. BUDC continues to work on the memorandum of understanding with NWTC and ESD.

683 Northland: Watts has completed and submitted the checklist for LEED certification. Once approved, BUDC will submit to NYSERDA to obtain remaining grant funds of approximately \$30,000.00.

Community Solar & Microgrid Project Update: Frey Electric is completing pre-development work with respect to the installation of carports. Discussions continue regarding the repair of the substation for the microgrid project.

612 Northland: Albright Knox has reopened for its new exhibit "Herve Tullet: Shape and Color," which is the largest exhibition of work ever assembled of this artist, performer and children's book author. Local artists will be in residence throughout the exhibition.

714 Northland: Albright Knox is making progress on the mural for 714 Northland. Its contractor has performed masonry work on the building in preparation for the mural.

**537/541 E. Delavan:** BUDC continues to explore the opportunity to restart construction at 541 E. Delavan with some additional foundation work, roofing, masonry, excavation, framing and sheathing.

**Neighborhood Planning and Development:** BUDC continues to await a response from the NYSDOS regarding the Northland Beltline BOA and will move to next steps—holding a public meeting and reviewing draft applications for the project—once feedback is received.

**Community Outreach:** Mailboxes have been installed on the Northland campus in order to capture ideas and responses from residents regarding art and placemaking in the area. Responses will be reviewed soon.

**Business Network Services:** BUDC staff continues to coordinate with the Network Series Team to update the series. The next Network Series is targeted for October 2021.

**4.11 BBRP/Race for Place Project Update** – Ms. Merriweather presented an update on BBRP and the Race for Place project. Ms. Merriweather reported on her presentation at the Massachusetts DOT National Innovation Conference on Race for Place and the Future of Mobility report and the connection to equity initiatives in Buffalo. She updated the Board regarding BUDC’s assistance with the review of the Mohawk Ramp RFP responses and the transportation demand management RFP responses. Ms. Merriweather anticipates that BUDC’s Downtown Committee will be updated on the Ellicott Node Concept Plan in July. Construction continues with respect to the Entertainment District infrastructure project. Ms. Merriweather also commented on the CFA application process.

**4.12 308 Crowley Project Update** – Mr. Cammarata reported that the sale of the cinderblock building is complete, and BUDC received the sale proceeds from Enterprise Folding Box Company on June 21<sup>st</sup>. Mr. Cammarata and Ms. Gandour have also been working on the insurance renewal for the property. Mr. Comerford reported that the City of Buffalo bid out the demolition work, which was awarded to Empire Dismantlement. He noted that additional funding is needed to complete additional phases of the demolition work.

**5.0 Late Files** – None.

**6.0 Tabled Items** – None.

**7.0 Executive Session** – Yes, item 4.5.

**8.0 Adjournment** – There being no further business to come before the Board, upon motion made by Ms. Curry, seconded by Mr. Halligan and unanimously carried, the June 29, 2021 Board of Directors meeting was adjourned at 1:25 p.m.

Respectfully submitted,



Kevin J. Zanner, Secretary

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**Item 4.1**

**MEMORANDUM**

**TO: BUDC Board of Directors**

**FROM: Rebecca Gandour, BUDC Executive Vice President**

**SUBJECT: Ralph C. Wilson, Jr. Centennial Park - Edith Wilson and Linda Bodgan Garden and Tennis Fund of the Community Foundation for Southeast Michigan Award**

**DATE: August 31, 2021**

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The BUDC Board of Directors previously authorized BUDC to accept funding for efforts related to the redevelopment of the Ralph C. Wilson, Jr. Centennial Park. BUDC recently received notification of a \$300,000 award from the Edith Wilson and Linda Bodgan Garden and Tennis Fund of the Community Foundation for Southeast Michigan. Funds are to be used to support the capital construction of Ralph C. Wilson, Jr. Centennial Park in Buffalo, including seasonal plantings, irrigation and other elements to support the development of the Edith Wilson and Linda Bodgan Garden. It is my understanding that the advisors intend to recommend similar grants in 2022 and 2023, subject to the approval of the board of the Community Foundation.

This grant funding award was presented to the BUDC Downtown Committee for review and comment on August 18, 2021. The Downtown Committee is recommending approval.

**ACTION**

I am requesting that the BUDC Board of Directors (i) accept the \$300,000 grant award from the Edith Wilson and Linda Bodgan Garden and Tennis Fund of the Community Foundation for Southeast Michigan to support the construction of the entry garden for Ralph C. Wilson Jr. Centennial Park and (ii) authorize the BUDC President or the BUDC Executive Vice President to take such actions as are necessary to implement this authorization.

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**Item 4.2**

**MEMORANDUM**

**TO: BUDC Board of Directors**

**FROM: Rebecca Gandour, BUDC Executive Vice President**

**SUBJECT: Ralph C. Wilson, Jr. Centennial Park – SJB Contract Amendment**

**DATE: August 31, 2021**

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At the May 26, 2020 meeting, the BUDC Board of Directors approved an agreement with SJB Services, Inc. for due diligence services for the Ralph C. Wilson Jr. Centennial Park project. BUDC through its project manager, Gardiner & Theobald (G&T) has identified the need for additional due diligence services including soil borings and underground tank investigation. The contract amendment would be for a not to exceed amount of \$92,500.

G&T coordinated the receipt and review of the SJB Services cost estimates and scope and determined that the work is necessary and appropriately priced. The cost of the work will be covered through a previously awarded grant from the Ralph C. Wilson, Jr. Foundation.

This item was discussed with BUDC Board at the July 27, 2021 meeting, but due to the lack of quorum formal action could not be taken. In the interim, BUDC executed a notice to proceed authorization with SJB Services, Inc. as the work required timely action.

The BUDC Downtown Committee reviewed this item at their August 18, 2021 meeting and is recommending approval.

**ACTION**

I am requesting that the BUDC Board of Directors (i) ratify the authorization to proceed with necessary and timely due diligence work (ii) approve an amendment to the agreement with SJB Services, Inc. for a not to exceed amount of \$92,500 for additional due diligence services in support of the Ralph C. Wilson, Jr. Centennial Park project, and (iii) authorize the BUDC President or BUDC Executive Vice President to take such actions as are necessary to implement this authorization.

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**Item 4.3**

**MEMORANDUM**

**TO: BUDC Board of Directors**

**FROM: Brandye Merriweather, BUDC President**

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

**DATE: August 31, 2021**

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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 27, 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.

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The BUDC Real Estate Committee reviewed this item at their August 24, 2021 meeting and is recommending approval.

**ACTION:**

We are requesting that the BUDC Board of Directors (i) ratify the granting of a short-term 60-day extension of the due diligence period ending September 30, 2021; (ii) approve 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 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.

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**Item 4.4**

**MEMORANDUM**

**TO: BUDC Board of Directors**

**FROM: Rebecca Gandour, BUDC Executive Vice President**

**SUBJECT: Canal Park and Canal Bridge Maintenance Agreements**

**DATE: August 31, 2021**

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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

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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 Board 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.

The BUDC Real Estate Committee reviewed this item at their August 24, 2021 meeting and is recommending approval.

### **ACTION**

I am requesting 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.