

**MINUTES OF THE MEETING OF THE
THE BOARD OF DIRECTORS
OF THE BUFFALO AND ERIE COUNTY
INDUSTRIAL LAND DEVELOPMENT CORPORATION
(ILDC)**

DATE AND PLACE: March 22, 2023, at the Center of Excellence in Bioinformatics and Life Sciences (CBLIS), 701 Ellicott Street, The Event Space/Conference Room B2-205, located on the 2nd floor, Buffalo, New York 14203.

PRESENT: Denise Abbott, Daniel Castle, Hon. Howard Johnson, Richard Lipsitz, Jr. and Hon. Mark C. Poloncarz

EXCUSED: April Baskin and Hon. Byron W. Brown

OTHERS PRESENT: John Cappellino, President & CEO; Beth O’Keefe, Vice President of Operations/Secretary; Mollie Profic, Chief Financial Officer; Atiq Abidi, Assistant Treasurer; Gerald Manhard, Chief Lending Officer; Grant Lesswing, Director of Business Development; Andrew Federick, Business Development Officer; Soma Hawramee, Compliance Portfolio Manager; Brian Krygier, Director of Information Technology; Carrie Hocieniec, Operations Assistant/Assistant Secretary; Laurie Hendrix, Administrative Coordinator; Robbie Ann McPherson, Director of Marketing & Communications and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC

GUESTS: Zachary Evans and Andrew McLaren on behalf of Erie County; Josh Veronica on behalf of Buffalo Niagara Partnership; Dale Shoemaker on behalf of Investigative Post; Jonathan Epstein on behalf of the Buffalo News and Jim Fink on behalf of Business First.

There being a quorum present at 1:12 p.m., the Meeting of the Board of Directors of the Buffalo and Erie County Industrial Land Development Corporation was called to order its Chair, Mr. Poloncarz.

MINUTES

Ms. Abbott moved and Mr. Castle seconded to approve of the February 22, 2023 minutes. Mr. Poloncarz called for the vote and the minutes were unanimously approved.

REPORTS / ACTION ITEMS / INFORMATION ITEMS

Financial Report. Ms. Profic presented the February financial reports. The balance sheet shows the ILDC ended the month with total assets of \$18.8M. Grants receivable of \$10.2M represent amounts awarded by several sources, the largest being Buffalo Billion II funds from Empire State Development. Liabilities of \$10.6M is deferred grant revenue. Net assets total \$7.2M. The February income statement shows \$1,700 of revenue, \$18,500 of expenses and \$1,400 of special project expenses, netting to a \$18,000 net loss in February. The year to date income statement shows revenues of \$3,600 and expenses of \$34,000. Special project expenses of \$75,000 lead to a net loss of \$105,000 so far in 2023. Mr. Poloncarz directed that the report be received and filed.

Finance and Audit Committee Update. Ms. Profic introduced Michael Szukala, Chair of Finance & Audit Committee. Mr. Szukala summarized the memorandum regarding the joint Finance & Audit Committee meeting held on March 16. Our auditors from Lumsden McCormick presented the draft 2022 audited financial statements, which will be reviewed shortly. The three main points of the presentation were an unmodified (clean) opinion on the financial statements, there were no uncorrected audit adjustments, and there were no material weaknesses or significant deficiencies noted (no management letter comments). The Committee also reviewed and recommend the items listed under #2-#7 for approval or re-adoption: 2022 Public Authorities Report, 2022 Investment Reports, Investment & Deposit Policy, Committee Charter, Committee Self-Evaluation, Management's Assessment of the Effectiveness of Internal Controls, and Corporate Credit Card Policy with no suggested changes.

The Committee Self-Evaluation was presented. Each year the Committee completes a self-evaluation, as required by the Committee Charter. Essentially, did the Committee fulfill its duties per the Committee Charter? Comments in the rightmost column give some detail of the Committee activity throughout the year, and there are additional notes in the Board package. In 2022, the Committee convened a total of five times and fulfilled its duties as documented. Mr. Poloncarz directed that the report be received and filed.

Audited Financial Statements. Ms. Profic reviewed the draft 2022 audited financial statements, required communications, and management letter. Lumsden's required communications with those charged with governance, which documents the auditors' responsibility related to the financial statement audit, notes that there were no matters of concern that arose related to the significant risks identified, a summary of accounting estimates made within the financials, that there were no uncorrected audit adjustments, and no disagreements with management. The most significant estimates for ILDC are the depreciation of capital assets and the allowance for uncollectible accounts. Ms. Profic advised an unmodified opinion was issued on the statements. The management letter noted no significant deficiencies or material weaknesses. The Representation Letter will be signed once the audit is approved by the Board. The draft financial statements were reviewed. As a component unit of Erie County, the ILDC's financial statements are prepared based on Governmental Accounting Standards and include a

Management's Discussion and Analysis section, which provides a condensed overview of the statements. The balance sheets showed total assets of \$18.9M as of December 31, 2022, compared to \$17.6M at the end of 2021. Current assets increased \$1.9M, due mainly to an increase in grants receivable. Land held for sale decreased from \$7.2M to \$6.9M due to the sale of 8 acres at Renaissance Commerce Park. Liabilities increased \$1.8M, again due mainly to an increase in unearned revenue associated with grants awarded but not yet spent/earned. There was a decrease in net position of \$513,000. The statements of revenues, expenses, and changes in net position (income statements) detail the change in net position for the year. The operating loss of \$934,000 was driven by increased expenses and a loss on the sale of land. This occurred because the book value of the land sold exceeded the sale price, which can be common for entities like ILDC due to the costs involved in acquiring and remediating land. Operating expenses of \$956,000 increased due mainly to a \$482,000 provision for uncollectible loans under the Microloan program. Most of these microloans have a forgiveness component if a certain amount of principal is paid as agreed. What this provision for uncollectible loans does is recognize the best-case scenario, where borrowers are repaying 50% or 60% of their loan and the rest being forgiven. Special project grants include income and expenses related to grants, including \$1.3M from ESD and \$89,000 from EDA related to road construction and sewer and water work at RCP, as well as \$463,000 sub granted from Erie County for new loans in the Microloan fund. Grant expenses include \$104,000 returned to ECIDA's UDAG fund from the sale of land at Renaissance Commerce Park and \$1.4M of other grant costs related to RCP. Overall there was a decrease in net position of \$513,000 in 2022, compared to an increase of \$820,000 in 2021. The cash flows statements detail the changes in cash each year. The remainder of the financials are the notes and supplementary information, which show the balance sheet and income statement at the fund level. These drafts were reviewed and discussed in detail with the Finance & Audit Committee on March 16th, and they recommended approval to the Board. We will continue to work with Lumsden McCormick to file IRS Form 990.

Ms. Abbott moved and Mr. Lipsitz seconded to approve of the 2022 Audited Financial Statements. Mr. Poloncarz then called for the vote and the 2022 Audited Financial Statements were unanimously approved.

2022 Investment Report. Ms. Profic advised this report is required by Public Authorities Law and includes ILDC's investment guidelines, the results of the annual audit of these guidelines, and detail of investment income and fees for the year. There was \$1,100 of investment income earned on the accounts during 2022 and no fees were paid. This report was reviewed by the Finance & Audit Committee at their March 16th meeting and recommended to the Board for approval.

Mr. Lipsitz moved and Mr. Johnson seconded to approve of the 2022 Investment Report. Mr. Poloncarz then called for the vote and the 2022 Investment Report was unanimously approved.

Governance Committee Update: Mr. Cappellino provided the Committee with an update. Mr. Poloncarz directed that the report be received and filed.

ILDC Loan Status Report. Mr. Manhard provided this report to Committee members. Mr. Poloncarz directed that the report be received and filed.

REVIEW AND ADOPTION OF POLICIES, REPORTS AND COMMITTEE CHARTERS.

2022 Mission Statement, Performance Measures and Results. Ms. Profic reviewed the 2022 Mission Statement and related results. Mr. Lipsitz moved and Mr. Johnson seconded to approve of the 2022 Mission Statement and results. Mr. Poloncarz called for the vote and the 2022 Mission Statement and results were unanimously approved.

2023 Mission Statement and Performance Measures. Ms. Profic reviewed the 2023 Mission Statement and performance measures. Mr. Lipsitz moved and Mr. Johnson seconded to approve of the 2023 Mission Statement and performance measures. Mr. Poloncarz called for the vote and the 2023 Mission Statement and Performance Measures were unanimously approved.

2022 Public Authorities Report. Ms. Profic reviewed 2022 Public Authorities Annual Report. As a Public Authority of the State of New York, ECIDA and its affiliates are required to comply with the NYS Public Authorities Law and submit a comprehensive annual report including information on several topics. Several of the items are covered by other documents, like the operations and accomplishments and financial statements, which are note throughout the document. The third item, Mission Statement & Performance Measurements, is updated each year with actual results (and was just reviewed). Many of the items included are standard from year to year and are also approved or re-adopted by the Board annually. Section 13 was updated for 2022 to update the work underway at ILDC-owned properties, the UTEP and CEDS updates during the year, and RDC's lending activity. Attachments include outstanding bond information, salary & benefit information, projects undertaken by each entity, our Property Report, Board Member attendance, and the Procurement Reports for each entity. Once approved, Mr. Cappellino and I will sign the certification and the report will be posted to our website. This report was reviewed by the Governance Committee at their March 13th meeting and the Finance & Audit Committee at their March 16th meeting and has been recommended to the Board for approval.

Mr. Lipsitz moved and Mr. Johnson seconded to approve of the 2022 Public Authorities Report. Mr. Poloncarz called for the vote and the 2022 Public Authorities Report was unanimously approved.

Airborne Infectious Disease Policy. Ms. Profic stated this is a required policy under the NYS HERO Act. The ILDC chose to use the DOL's template to establish a documented plan, which includes overall responsibilities, exposure controls, housekeeping, infection response, and the like. While the exposure prevention plan is not currently in effect, this is a policy the ILDC must have in place should it be necessary to implement the plan in the future. It will be reviewed at least annually to ensure that it is kept up-to-date with applicable guidance. This policy was

reviewed by the Governance Committee on March 13th and recommended to the Board for approval.

Mr. Lipsitz moved and Mr. Johnson seconded to approve of the Airborne Infectious Disease Policy. Mr. Poloncarz called for the vote and the Airborne Infectious Disease Policy was unanimously approved.

RE-ADOPT POLICIES AND CHARTERS

Mr. Poloncarz noted that Items 5-22 on the agenda were reviewed by counsel, the Board Committees recommended no changes, and as such, the staff recommends that the policies and charters items numbered 5-22 be approved without any changes. Mr. Castle moved and Ms. Abbott seconded to approve of the various polices and charters as itemized below. Mr. Poloncarz called for the vote and the following policies and charters were then unanimously approved:

- Board Member Compensation, Reimbursement & Attendance Policy
- Code of Ethics & Conflict of Interest Policy
- Corporate Credit Card Policy
- Defense & Indemnification Policy
- Employee Compensation Program
- Fee Structure Policy
- Finance & Audit Committee Charter
- Governance Committee Charter
- Investment & Deposit Policy
- Procurement Policy
- Professional Services RFP Process and Policy
- Property Disposition Guidelines
- Real Property Acquisition Policy
- Sexual Harassment Policy
- Statement of Duties & Responsibilities of the Board of Directors
- Statement of the Competencies & Personal Attributes Required by Board Members
- Travel, Conferences, Meals & Entertainment Policy
- Whistleblower Policy and Procedures

There being no further business to discuss, Mr. Poloncarz adjourned the meeting at 1:10 p.m.

Dated: March 22, 2023



Elizabeth A. O'Keefe, Secretary