

**MINUTES OF THE MEETING OF THE  
BOARD OF DIRECTORS OF THE  
BUFFALO AND ERIE COUNTY REGIONAL  
DEVELOPMENT CORPORATION  
(RDC)**

**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, Hon. Diane Benczkowski, Hon. Joseph Emminger, Dottie Gallagher, Hon. Howard Johnson, Tyra Johnson, Richard Lipsitz, Jr., Denise McCowan, Brenda W. McDuffie, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz and Kenneth A. Schoetz

**EXCUSED:** Rev. Mark E. Blue, Hon. Bryon W. Brown, James Doherty, Michael P. Hughes, Hon. Brian Kulpa, Hon. Darius G. Pridgen and Paul Vukelic

**OTHERS PRESENT:** John Cappellino, President & CEO; Beth O’Keefe, Vice President of Operations/Secretary; Mollie Profic, Chief Financial Officer; Atiqa 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, Andrew McLaren and Daniel Castle on behalf of Erie County; Josh Veronica on behalf of Buffalo Niagara Partnership; Connie Buynacek, Heather Chudzik, Laurie Eden and Matthew Bradley on behalf of Moog, Inc.; Bukola Mallia on behalf of Buffalo & Erie County Workforce Investment Board; 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 1:00 p.m., the meeting of the Buffalo and Erie County Regional Development Corporation (the “RDC”), was called to order by its Chair, Ms. McDuffie.

## MINUTES

The minutes of the February 22, 2023, meeting of the members were presented. Ms. Gallagher moved, and Mr. Nellis seconded, to approve of the minutes. Ms. McDuffie called for the vote, and the minutes were then unanimously approved.

## REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic presented the February financial reports. The balance sheet shows that the RDC finished the month with total assets of \$22.7M, consisting of cash and loans receivable. Liabilities reflect amounts due to ECIDA for 2022 costs and some deferred revenue related to the CARES Act RLF administrative funds. Net assets are \$22.2M. The February income statement shows \$54,000 of revenue, mostly loan interest income, and \$28,000 of expenses, netting to income of \$26,000 in February. All of the loans under the CARES Act RLF are now on at least interest payments, and moving toward all being on P+I. The year-to-date income statement shows revenues of \$111,000 and \$54,000 of expenses, for net income of \$57,000 through the first two months of the year. Ms. McDuffie directed that the report be received and filed.

Finance & Audit Committee and Committee Self-Evaluation. 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. Ms. McDuffie 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. Ms. Profic mentioned, an unmodified opinion was issued on the statements. The most significant estimate for RDC is the allowance for uncollectible accounts. The management letter noting no significant deficiencies or material weaknesses. The Representation

Letter will be signed once the audit is approved by the board. As a special-purpose government engaged in business-type activities, the RDC'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 show total assets of \$22.6M at December 31, 2022, an increase of \$515,000 (2%) from 2021. Loans receivable increased \$2.8M due to 6 loans closed in 2022 combined with principal repayments. Under current liabilities, there is \$97,000 of unearned revenue, which is new. This represents CARES Act grant funding that is earmarked for future administrative costs related to that loan fund, as the payment schedule on those loans ramps up. The statements of revenues, expenses, and changes in net position (income statements) detail the \$422,000 increase in net position for the year. Operating revenues of \$555,000 were up from \$447,000 in 2021, due to new loans closed and the CARES Act loans all starting their interest payments. Operating expenses decreased from \$823,000 in 2021 to \$243,000 in 2022, due to decreases in loan loss expense and general & administrative expenses. In 2021 a 10% reserve on the CARES Act RLF portfolio was established, and in 2022 the Agency was able to reduce the reserve related to the legacy RLF. The decrease in G&A expenses is due to additional costs related to temporary labor and underwriting for the CARES Act loans in 2021. Under nonoperating revenues, grant contributions of \$5.1M in 2021 represented the majority of CARES Act RLF grant funds passed through ECIDA. Grant revenue of \$96,000 is related to administrative costs and was recognized in 2022. The cash flows statements details the changes in cash balances from year to year. The overall decrease in cash was due to loans closed during the year. The remainder of the financials are the notes, supplementary information, and the Schedule of Expenditures of Federal Awards. The CARES Act RLF requires a single audit. The Schedule of Findings and Questioned Costs, report there were no findings or questioned costs noted as a result of the Single Audit. These drafts were reviewed and discussed in detail with the Finance & Audit Committee on March 16, and they recommended approval to the Board. We will continue to work with Lumsden McCormick to file IRS Form 990 and the Data Collection Form related to the single audit.

Ms. Gallagher moved and Mr. Emminger seconded to approve of the 2022 Audited Financial Statements. Ms. McDuffie then called for the vote and the 2022 Audited Financial Statements were unanimously approved.

Governance Committee Update: Ms. McDuffie provided the Committee with an update on the most recent Governance Committee meeting which carried out its several meetings to review 2022 Performance and establishing amended 2023 Performance metrics, reviewed and re-adoption of RDC policies and the Governance Committee performance evaluation.

Ms. McDuffie then reviewed the Governance Committee self-evaluation and the RDC Board Member evaluation of board performance. Ms. McDuffie encouraged any member to provide their feedback or suggestions to improve the board's performance to her. Ms. McDuffie directed that the report be received and filed.

Investment Report. Ms. Profic advised this report is required by Public Authorities Law and includes RDC's investment guidelines, the results of our annual audit of these guidelines, and detail of investment income and fees for the year. There was \$13,000 of interest income earned on these accounts during 2022, and no fees were paid. This report was reviewed by the

Finance & Audit Committee at their March 16<sup>th</sup> meeting and recommended to the Board for approval.

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

Loan Status Report. Mr. Manhard provided this report to the members. Ms. McDuffie directed that the report be received and filed.

Approval of Board Certification of Loan Administration Plan-CARES ACT RLF. Mr. Manhard reviewed the CARES ACT Resolution related to the CARES Act revolving loan fund, requiring ECIDA to certify that the fund was operating and is operating consistent with the loan policy. Mr. Emminger moved and Mr. Johnson seconded to approve of the CARES ACT Resolution. Ms. McDuffie then called for the vote and the following resolution was unanimously approved.

RESOLUTION OF THE BUFFALO AND ERIE COUNTY REGIONAL DEVELOPMENT CORPORATION (THE “RLF LOAN BOARD” OR “RDC”) IN CONNECTION WITH AN ANNUAL CERTIFICATION TO BE MADE UNDER THE STANDARD TERMS AND CONDITIONS AND ADMINISTRATIVE MANUAL REQUIREMENTS OF THE FEDERAL ECONOMIC DEVELOPMENT ADMINISTRATION

## **REVIEW AND ADOPTION OF POLICIES, REPORTS AND COMMITTEE CHARTERS.**

2022 Mission Statement, Performance Measures and Results. Ms. O’Keefe reviewed the 2022 Mission Statement and related results. Mr. Lipsitz moved and Mr. Emminger seconded to approve of the 2022 Mission Statement and results. Ms. McDuffie called for the vote and the 2022 Mission Statement and results were unanimously approved.

2023 Mission Statement and Performance Measures. Ms. O’Keefe reviewed the 2023 Mission Statement and performance measures. Mr. Lipsitz moved and Mr. Emminger seconded to approve of the 2023 Mission Statement and performance measures. Ms. McDuffie 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 13<sup>th</sup> meeting and the Finance & Audit Committee at their March 16<sup>th</sup> meeting and has been recommended to the Board for approval.

Mr. Lipsitz moved and Mr. Emminger seconded to approve of the 2022 Public Authorities Report. Ms. McDuffie 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 RDC 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 RDC 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 13<sup>th</sup> and recommended to the Board for approval.

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

## **RE-ADOPT POLICIES AND CHARTERS**


Ms. Profic 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. Ms. Gallagher moved and Mr. Nellis seconded to approve of the various polices and charters as itemized below. Ms. McDuffie 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, Ms. McDuffie adjourned the meeting at 1:12 p.m.

Dated: March 22, 2023

  
\_\_\_\_\_  
Elizabeth A. O'Keefe, Secretary