

BATAVIA DEVELOPMENT CORPORATION (BDC)
Meeting Minutes June 27, 2019

Attendance

BDC Attendees: Pier Cipollone, Wesley Bedford, Nate Varland, Martin Moore, Steve Pies, Jake Whiting, Rebecca Cohen and Rachael Tabelski (Director of Economic Development)

Excused: Chris Fix, Lori Aratari

Guest/Media: Brian Quinn- The Batavia Daily News, Lauren Leone- The Batavian

Call to Order

At 8:32 a.m. P. Cipollone, President of the BDC, called the meeting to order in the Community Room, 2nd floor of City Hall.

Enter Executive Session

S. Pies made a motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105, at 8:35 a.m. for the following reasons:

1. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion discipline, suspension, dismissal or removal of a particular person or corporation.
2. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

The motion was seconded by W. Bedford and approved by all members present.

8:55 a.m. Jake whiting left the meeting.

Enter Public Session

S. Pies made a motion to enter back into public session at 9:09 a.m.; seconded by N. Varland and approved by all members present.

Chairman's Report

P. Cipollone presented the meeting minutes from the May 23, 2019 meeting. W. Bedford made a motion to approve the meeting minutes as presented; seconded by P. Cipollone and approved by all members present.

P. Cipollone announced the next scheduled meeting for the BDC will be held on July 25th, 2019 at City Hall at 8:30 a.m.

Presentation

Gregory Hallock, GO ART! Executive Director, presented to the board. GO ART! is seeking an approval of a \$50,000 loan commitment to show local funding capacity in an effort to secure grant funds. GO ART! will be applying for the Finger Lakes Regional Economic Development Council Consolidated Funding Application for Arts & Cultural Facilities (NYSCA) Improvement Program - Midsized Capital Project Fund through the New York State Council on the Arts. The application is due July 26th. The loan would be an interest only, grant back, construction loan to aid improvements at Seymour Place.

GO ART! applied to the DRI, however the project was not selected by the state review committee for funding. GO ART! needs to make immediate exterior improvements to Seymour Place and is looking to add an elevator for accessibility.

GO ART! has also applied to the Batavia DRI- Building Improvement Fund and scored 65 out of 100 points. There is still an opportunity for GO ART! to access grant funds from this program as the first eight projects finalize their scopes and

project costs. Go ART! also has other building improvement grant applications under consideration at this time from different regional sources.

To apply for the NYSCA Arts & Cultural Facilities Improvement Program - Midsized Capital Project Fund GO ART! must show their ability, including financing, to complete a capital project. GO ART! currently has access to a \$40,000 line of credit to assist with any potential project, and would like the BDC to approve, and issue a letter of commitment for a \$50,000 loan commitment to show the local match capacity. GO ART!'s finances are in order and they are capable of making payments on the loan until grant reimbursement fully pays off the loan.

Committee Reports

Governance

Resolution to Amend and File Certificate of Incorporation and Adopt Updated By-Laws

RESOLUTION APPROVING OF AND AUTHORIZING THE BATAVIA DEVELOPMENT CORPORATION TO: (i) EXECUTE AND FILE A CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION PURSUANT TO SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW; AND (ii) AMEND THE BY-LAWS OF THE BATAVIA DEVELOPMENT CORPORATION

WHEREAS, the Batavia Development Corporation (the "BDC") was established as a not-for-profit local development corporation of the State of New York organized under Section 1411 of the New York State Not-For-Profit Corporation Law ("NPCL") and is a corporation as defined in sub-paragraph (a)(5) of Section 102 of said law, for which a Certificate of Incorporation was filed on August 15, 1994 (the "Certificate"); and

WHEREAS, by a determination letter issued by the Internal Revenue Service (the "IRS") on or about August 22, 2011, the BDC was recognized as, and still is, a tax exempt corporation under § 501(c)(4) of the Internal Revenue Code ("IRC"), as a result of which donors may not deduct contributions made to it; and

WHEREAS, the BDC is in the process of filing an application with the IRS for tax exempt designation as a § 501(c)(3) charitable corporation; and

WHEREAS, two important requirements of the tax exemption status application as an IRC § 501(c)(3) charitable corporation are that a corporation's certificate of incorporation properly limit its charitable purpose to the scope of IRC § 501(c)(3) and provide for a standard dissolution clause. As is, BDC's Certificate, filed 1994, does not meet these requirements; and

WHEREAS, in furtherance of making the IRC § 501(c)(3) application and in order to receive a favorable determination from the IRS, BDC desires to adopt a resolution to authorize the execution and delivery of a Certificate of Amendment (the "Certificate of Amendment") to amend the Certificate in accordance with IRS guidance materials for tax exemption under IRC § 501(c)(3); and

WHEREAS, pursuant to Article VII of BDC's By-Laws, revised September, 2012, the By-Laws may be adopted, amended or repealed only by two-third (2/3) vote of the entire Board of Directors of BDC; and

WHEREAS, the BDC also desires to adopt a resolution authorizing amendment to its By-Laws.

NOW, THEREFORE, BE IT RESOLVED BY THE DIRECTORS OF THE BATAVIA DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. Pursuant to and in accordance with NPCL § 803, the BDC hereby approves and authorizes the execution of a Certificate of Amendment substantially in the form attached as **Exhibit A**, hereto. The BDC hereby further authorizes the filing of said Certificate of Amendment with the New York State Department of State.

Section 2. Pursuant to and in accordance with Article VII of the BDC's By-Laws, the BDC hereby amends and restates its By-Laws, a copy of which is attached hereto as **Exhibit B** and as annexed to the minutes of this meeting and made a part hereof. The Amended and Restated By-laws of the BDC are hereby adopted.

Section 3. The directors, officers, employees and agents of the BDC are hereby authorized and directed for and in the name and on behalf of BDC to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the director, officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by BDC with all of the terms, covenants and provisions of the documents executed for and on behalf of BDC.

Section 4. BDC hereby ratifies, confirms, and approves any and all prior actions and approvals heretofore undertaken in connection with the foregoing.

Section 5. This Resolution shall take effect immediately. Dated: June 27, 2019

R. Cohen made a motion to approve the resolution; seconded by M. Moore and approved by all members present.

Audit and Finance

2018-19 BDC Audit- P. Cipollone presented the BDC's 2018-19 Audit. The BDC Audit & Finance Committee met with Nicole Ryan and Laura Landers CPA's with Freed Maxick on June 19th to review the agency audit. The BDC Board engaged Freed Maxick, a certified public accounting firm, to perform an independent audit of the 2018-19 financial statements. The Audit & Finance committee reported that Freed Maxick, affirmed that no material deficiencies in internal controls were identified during the audit. The firm also affirmed that, in their opinion, the audited financial statements present fairly, in all material respects, the financial position of the BDC as of March 31, 2019, in accordance with generally accepted accounting principles. The Audit can be found on the BDC website.

W. Bedford made a motion to approve the BDC 2018-19 Audit as presented; seconded by R. Cohen and approved by all members present.

2018-19 Annual Report- The BDC board reviewed the BDC's Annual Report. A few minor changes were suggested and R. Tabelski confirmed she would make the changes. The Annual Report can be found on the BDC website.

W. Bedford made a motion to approve the BDC 2018-19 Annual Report as presented; seconded by R. Cohen and approved by all members present.

2018-19 Paris Report- The BDC board reviewed the agency's Paris Report that is required to be filed annually per The Public Authorities Reform Act of 2009 (Chapter 506 of the Laws of 2009). R. Tabelski noted some minor changes that needed to be made and that the report would be filed Friday June 28th prior to the New York State Authority Budget Office (ABO) deadline. The PARIS report can be found on the BDC website.

R. Cohen made a motion to approve the BDC 2018-19 Paris Report as presented; seconded by N. Varland and approved by all members present.

Investment Report the BDC reviewed the Investment Report and letter from Freed Maxick certifying that the agency has complied with the Investment Guidelines based on the criteria referred to under New York State Comptroller's Investment Guidelines for Public Authorities and Section 2925 of the New York State Public Authorities Law.

S. Pies made a motion to approve the BDC 2018-19 Investment Report as presented; seconded by W. Bedford and approved by all members present.

Procurement Report- The BDC reviewed the Procurement Report prepared as part of the Annual Report. There were no transactions that were non-contract procurement, such as purchase orders, that resulted in a cumulative payment of \$5,000 or more to a single vendor during the fiscal year. The authority did have one contract that was competitively bid for architectural and administrative services related to the Batavia DRI-Building Improvement Fund. The contract totaled \$45,000 and was awarded on January 23, 2019.

N. Varland made a motion to approve the BDC 2018-19 Procurement Report as presented; seconded by R. Cohen and approved by all members present.

9:50 a.m. W. Bedford left the meeting.

Financial Statements- The May 2019 financial statements were reviewed with the board, and a brief overview was given. R. Tabelski reported that the only activity in the month of May was a \$495 referral fee payment from the GCEDC and salary expenses related to the Director of Economic Development.

S. Pies made a motion to approve the May 2019 financial statements; seconded by R. Cohen and approved by all members present.

Directors & Officers Liability Insurance Extension- R. Tabelski reported that in an effort to align the BDC's insurance renewals to coincide with the beginning of the fiscal year the BDC requested an extension of their current Directors & Officers Liability insurance. The extension will run from August 1, 2019 until April 1, 2020. The additional premium for this extension is \$966. The agency budgeted \$900 for Directors and Officers Liability Insurance in the 2019-20 budget. The policy has \$1 Million in liability coverage, \$1 Million in employment practices, \$ 1 Million in aggregate insurance. There is a \$2,500 deductible for each claim.

N. Varland made a motion to approve the extension of the Directors & Officers Liability Insurance extension; seconded by R. Cohen and approved by all members present.

Real Estate/ BOA

Ellicott Station- The owners of the Ellicott Station site, Savarino Companies, continue to work on pre-development activities including brownfield testing, permitting, exploring phasing opportunities, and finalizing financing. The BDC, the City of Batavia and the GCEDC continue to work with the developer to help finalize the project.

Batavia DRI- Project Updates- R. Tabelski and Insite Architecture continue to work with project owners finalizing their budgets, scope of work and on environmental and State Historic Preservation Office submissions. After initial discussions some projects will increase in investment as the architects work to finalize upper-floor apartment renderings and cost estimates. Others projects have looked to reduce their scope as they had expectations of a more robust grant award.

City RLF Grant Policy- On June 24th the City of Batavia City Council discussed and advanced a policy document to their Business meeting (July 8th). The Policy will provide framework for the RLF fund to distribute grants for City economic development initiatives, BOA, and for small building improvement fund grants. Specifically, the policy outlines when grants may be considered and how much of the fund must remain for revolving loans for small business, and how much

can be used for grants. The BDC is responsible for making decisions on the loans, reporting on the balance of the fund and overall administration. The City council will be the decision maker on any grant requests that come forward.

Genesee Dental CBDG Grant- On June 24th the City of Batavia City Council discussed and set a Public Hearing (July 8th) for the application of Genesee Dental Community Development Block Grant, through the 2019 New York State Consolidated Funding Application. The Community Development Block Grant program will allow the City of Batavia to assist Genesee Dental PC to redevelop a vacant commercial building at 215 East Main Street into a modern, state-of-the-art dental facility to better serve patients throughout the City of Batavia, Genesee County, and beyond. The community will benefit significantly from the completion of this project because it will add 15-20 well-paying jobs in the City of Batavia; increase the accessibility of quality dental health services for the community; and advance the revitalization of Batavia's downtown by redeveloping a vacant storefront. The total capital investment on the project is approximately \$1.3 Million.

BOA Pre-Development CFA Grant Application- R. Tabelski said that the City of Batavia City Council and City Manager are looking into a funding opportunity in the 2019 Consolidated Funding Application (CFA) for a pre-development grant that could be used at designated BOA sites. Services such as environmental investigation, legal real estate services fees associated with land assembly, design and engineering services or infrastructure and buildings, building condition studies, public engagement and marketing are allowed under the grant. In the final BOA plan issued by the City, a list of "next steps" was identified to re-develop the sites and many of these services can be funded under this new grant program.

Small Business

The GO-ART! loan request was discussed. Members of the board felt that supporting GO ART! and their building was important and they wanted to assist the organization. The board discussed the importance of arts and culture downtown and the historic building that is worthy of preservation. They asked R. Tabelski to get the sources and uses review of the programs that GO ART! is pursuing at this time. The board members agreed to approve a Conditional Offer of a \$50,000 interest only loan with fixed payments that will expire on September 30, 2019. The Conditional Offer can be extended by board approval. The board will hear from GO ART! again at their August meeting to determine if the conditional offer will need to be extended.

Old Business- nothing at this time.

New Business nothing at this time.

Adjournment

S. Pies made a motion to adjourn the meeting; seconded by R. Cohen and approved by all member present. The meeting stood adjourned at 10:06 a.m.