

BATAVIA DEVELOPMENT CORPORATION (BDC)
1 City Centre, Batavia NY @ 8:30am
Meeting Minutes September 24th, 2020

Attendance

BDC Attendees: Lori Aratari, Andrew Maguire (Director), Rachael Tabelski, Nathan Varland, Pier Cipollone, Derek Geib, Chris Fix (attendance by video conference)

Excused: Rebecca Cohen, Steve Pies, Jake Whiting

Members by Conference Call (no motions or voting rights): Wesley Bedford

Media/Guests: none

Call to Order

At 8:42 a.m. L. Aratari, President of the BDC, called the meeting to order, which will be recorded and posted on the BDC website. The BDC will not enter executive session.

Presentations: None.

Enter Executive Session

N. Varland made a motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105, at 8:44 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 D. Geib and approved by all members present.

Enter Public Session

Motion of C. Fix enter back into public session at 9:34 a.m.; seconded by R. Tabelski and approved by all members present.

Enter Public Session:

Chairman's Report

President L. Aratari presented the meeting minutes from the August 27th, 2020 meeting. Motion of D. Geib to approve the meeting minutes as presented; seconded by C. Fix and approved by all members present.

L. Aratari announced the next scheduled meeting for the BDC will be held on October 22nd, 2020 at City Hall at 8:30 a.m.

L Aratari discussed the next 4 responses on the Board Members Confidential Evaluations.

Committee Reports

Governance and Nomination Committee: L. Aratari states the BDC will hold a Governance Committee Meeting in October to review the current BDC policies in depth. The date is to be determined with coordination of schedules.

Audit and Finance:

Financial Statements- The August 2020 financial statements were reviewed with the board, and a brief overview was given. A. Maguire states the budget balances have been imported into the financials and the BDC is on pace to be under expended the 2020-2021 fiscal year, mainly due to lack of need for additional professional services at this time.

Motion of P. Cipollone to approve the June 2020 financial statements, seconded by N. Varland, approved by all members present.

L. Aratari state the BDC will hold an Audit and Finance Committee Meeting in October to begin the 2021-2022 budget, date to be determined with coordination of schedules.

Real Estate/BOA/DRI/BIF/NYMS

Batavia DRI/DRI-BIF Project Updates- A. Maguire states he will highlight the updates and movement on the projects since the last BDC meeting. 242 Ellicott has begun construction. 99 Main Street has submitted for their building permits. A “DRI-BIF Kick Off Event” has been scheduled for tomorrow, Friday September 25th for the project as one of the first to reach the construction milestone. 109-111 Main street will be out to bid by the end of September most likely, waiting on the project owner to give the go ahead. 206 E. Main Streets multi-phased project continues to progress with design for review with the City’s Planning and Development Committee which have been submitted and should be on the October agendas. 39-43 Jackson has agreed to the additional Environmental testing.

The DRI projects are also moving forward, Ellicott Place is under construction which will add 10 apartments to our downtown. Ellicott Station has confirmed the building permits with the City. A news article was posted as HCR minutes concluded that Ellicott Station has been awarded a grant for funding. YMCA and UMMC have selected an architectural firm and continue their design work. Theater 56 continues to finalize their designs and the demolition; the project demo is still about 95% complete and will submit the designs to the City when they are ready.

A. Maguire states that the New York Main Street Grant projects have completed their environmental screening and review and will be moved to State Historical Preservation Organization review once scopes are completely finalized. The projects are on a great path to be completed in a timely manner.

The City was a recipient of the BOA grant for City Centre and Harvester, the city and BDC are working with Chris Bauer at Dept of State and this will help with predevelopment activities and the deliverables are being reviewed. October 2020 is still the projected contract date, or shortly there after as costs incurred prior are not eligible for reimbursement.

Small Business - None.

Old Business- A. Maguire has finalized the BDC Developers Brochure which will highlight the economic development initiatives and programs available. No suggestions on changes from the Board. the brochure will be posted on the BDC’s website and available for developers to review.

New Business – A. Maguire presented Resolution #4 – 2020: RESOLUTION APPROVING AND AUTHORIZING THE BATAVIA DEVELOPMENT CORPORATION TO NEGOTIATE AND EXECUTE A CERTAIN ESTOPPEL AGREEMENT, ESD CAPITAL GRANT AND RELATED SUB-GRANT AGREEMENT AND A NATIONAL GRID GRANT UNDERTAKING AGREEMENT ALL FURTHER DESCRIBED HEREIN AND ALL AS SO RELATED TO THE ELLICOTT STATION PROJECT LOCATED IN BATAVIA, NEW YORK.

Motion of P. Cipollone to approve Resolution #4-2020 as stated above, seconded by R. Tabelski, approved by all members present.

99 Main Street – DRI-BIF Kick Off Event: 99 Main Street has submitted for their building permits. A “DRI-BIF Kick Off Event” has been scheduled for tomorrow, Friday September 25th for the project as one of the first to reach the construction milestone.

Adjournment

Motion of R. Tabelski to adjourn the meeting; seconded by D. Geib and approved by all member present. The meeting stood adjourned at 10:02 a.m.

BATAVIA DEVELOPMENT CORPORATION

RESOLUTION #4- 2020:

A meeting of the members of the Board of Directors of the Batavia Development Corporation was convened on September 24, 2020, at 8:30 a.m.

The following resolution was duly offered and seconded, to wit:

RESOLUTION APPROVING AND AUTHORIZING THE BATAVIA DEVELOPMENT CORPORATION TO NEGOTIATE AND EXECUTE A CERTAIN ESTOPPEL AGREEMENT, ESD CAPITAL GRANT AND RELATED SUB-GRANT AGREEMENT AND A NATIONAL GRID GRANT UNDERTAKING AGREEMENT ALL FURTHER DESCRIBED HEREIN AND ALL AS SO RELATED TO THE ELLICOTT STATION PROJECT LOCATED IN BATAVIA, NEW YORK

WHEREAS, the Batavia Development Corporation (the “BDC”), was established as a not-for-profit local development corporation of the State of New York with the authority and power to own, lease and sell personal and real property for the purposes of, among other things, acquiring, constructing and equipping certain projects exclusively in furtherance of the charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and instructing or training individuals to improve or develop their capabilities for such jobs, by encouraging the development of, or retention of business in the community or area, and lessening the burdens of government and acting in the public interest; and

WHEREAS, the BDC, since 2009, has undertaken efforts to secure and implement the New York State Brownfield Opportunity Area (BOA) central business corridor planning grant from the New York State Department of State (DOS), for the benefit of the residents of the City of Batavia and Genesee County; and

WHEREAS, the BDC, via implementation of the BOA process, has facilitated the remediation and redevelopment of an approximately \$20,000,000 plan for a BOA strategic site known as the Ellicott Station Project, consisting of a mixed-use commercial and residential project to be undertaken by the Savarino Companies, LLC (the “Savarino Company”) and its affiliates, Ellicott Station LLC (“ESL”) and Ellicott Station Development LLC (the “Company”) located at 40-52 and 56-70 Ellicott Street, Batavia, New York; and

WHEREAS, the BDC and the Savarino Company are parties to a certain Development Agreement, dated as of April 15, 2016 (the “Development Agreement”), and the BDC and the Company are parties to that certain Membership Interest Purchase Agreement, dated as of December 28, 2017, and that certain Unit Assignment dated December 28, 2017 (as amended from time to time, and collectively, the “Membership Purchase Agreement”, and collectively, with the Development Agreement, the “Ellicott Station Project Agreements”) pursuant to which the BDC sold and conveyed 100% of its membership interest in ESL to the Company for purposes of permitting the Company to undertake the Ellicott Station Project: and

WHEREAS, the BDC retains certain rights as described within the Ellicott Station Project Agreements, including the right of reversion in the event the Company does not undertake the Ellicott Station Project (the “BDC Rights”); and

WHEREAS, the Company is entering into a financing transaction or transactions involving multiple lenders and investors (collectively, the “Lenders”) with respect to funding the Ellicott Station Project and Lenders require the BDC to execute a certain Estoppel Certificate and Mortgagee’s and Investor’s Rights Agreement (the “Estoppel Agreement”) as related to the BDC Rights; and

WHEREAS, the BDC requires that the Company adhere to certain construction milestone dates and schedules as a condition of entering into the Estoppel Agreement; and

WHEREAS, the BDC applied for and obtained a certain capital grant from the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) in the amount of \$1,900,000 (the “ESD Grant”) for the benefit of the Company as it undertakes the Ellicott Station Project; and

WHEREAS, BDC and the Company desire to enter into a Sub-Grant Agreement with respect to the ESD Grant to permit the BDC to administer the distribution of the ESD Grant to the Company for purposes of undertaking the Ellicott Station Project; and

WHEREAS, BDC has applied for and obtained a certain grant from the Niagara Mohawk Power Corporation d/b/a National Grid in the amount of \$100,000 (the “National Grid Grant”) for the benefit of the Company as it undertakes the Ellicott Station Project; and

WHEREAS, the BDC and the Company desire to enter into an Undertaking Agreement with respect to the National Grid Grant to permit the BDC to administer the distribution of the National Grid Grant to the Company for purposes of undertaking the Ellicott Station Project.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The BDC hereby authorizes the negotiation and execution of the Estoppel Agreement as described herein, based upon such terms and conditions, and based upon the construction schedules as contained therein. The Director of Economic Development and/or Board President is hereby authorized, on behalf of the BDC, to negotiate and execute the Estoppel Agreement, and any and all necessary documents with respect to executing the aforementioned agreement, in consultation with counsel, as so determined by the Director of Economic Development and/or Board President.

Section 2. The BDC hereby authorizes the negotiation and execution of the ESD Grant as described herein, based upon such terms and conditions as contained therein. The Director of Economic Development and/or Board President is hereby authorized, on behalf of the BDC, to negotiate and execute the ESD Grant, and any and all necessary documents with respect to executing the aforementioned agreement, in consultation with counsel, as so determined by the Director of Economic Development and/or Board President.

Section 3. The BDC hereby authorizes the negotiation and execution of the Sub-Grant Agreement, by and between the BDC and the Company, based upon such terms and conditions as contained therein. The Director of Economic Development and/or Board President is hereby authorized, on behalf of the BDC, to negotiate and execute the Sub-Grant Agreement, and any and all necessary documents with respect to executing the aforementioned agreement, in consultation with counsel, as so determined by the Director of Economic Development and/or Board President.

Section 4. The BDC hereby authorizes the negotiation and execution of National Grid Grant Undertaking Agreement, by and between the BDC and the Company, based upon such terms and conditions as contained therein. The Director of Economic Development and/or Board President is hereby authorized, on behalf of the BDC, to negotiate and execute the National Grid Grant Undertaking Agreement, and any and all necessary documents with respect to executing the aforementioned agreement, in consultation with counsel, as so determined by the Director of Economic Development and/or Board President.

Section 5. The officers, employees and agents of 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 officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions 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 6. BDC hereby ratifies, confirms, and approves any and all prior actions and approvals heretofore undertaken in connection with the foregoing.

Section 7. These Resolutions shall take effect immediately.

Dated: September 24, 2020