

**North Dakota Development Fund
Board of Directors Meeting Minutes
January 14, 2021
10:00 A.M. – 12:00 P.M.**

Board Members Present via Microsoft Teams:

Gary Goplen, Chairman
Jim Albrecht
Matt Dunlevy
Josh Teigen
Terri Zimmerman
Pat Murphy

Board Members Absent:

Scott Davis
Rob Lindberg
Shawn Kessel

Staff Present via Microsoft Teams:

Hannah Lange
Jessica Nygaard

Call to Order

The meeting was called to order by Chairman, Gary Goplen at 10:03 A.M.

Approval of Minutes

A motion was made by Matt Dunlevy to approve the December 10, 2020 board meeting minutes. With a second from Terri Zimmerman, the motion carried unanimously.

The meeting was moved into executive session pursuant to North Dakota Century Code 10-30.5-07 at 10:05 A.M.

Adjourn

With no other business, the meeting was moved out of executive session at 10:30 A.M.

Financials

Jessica discussed the financial report. Total cash on hand was \$17,458,465.30. There was \$6,256,056.23 in the Development Fund, \$6,127,248.43 in the Rural Fund, \$3,702,823.98 in the Development Fund Venture Capital account, \$971,115.82 in New Business Tech, and \$401,360.84 in the Childcare Fund. There are \$2 million in CDs at the bank.

The total requested amount from the active/anticipated applications in the pipeline right now is \$2,580,000.00. There is \$430,000 in requests from the Development Fund, \$150,000 in requests from the Childcare Fund, and \$2,000,000 in requests from the Development Fund Venture Capital Account. If all loans are approved, the NDDF will have \$14,878,645.30 remaining cash on hand.

Josh explained that the Rural Fund is rarely used due to the language in the bill around the primary sector requirement and community matching funds. Commerce plans to propose an amendment to the century code to remove some of the language that has made this program difficult to utilize.

Terri asked if the pipeline includes the approved/committed funds. The staff explained that it does not. It only includes the amount requested by new applications. Jessica will provide this going forward.

Gary asked about past due accounts and how our customers are doing with the effects of the pandemic. Jessica stated that we are diving into this going forward. We focused on the BND accounts first and will begin to touch base with NDDF clients going forward. Gary requested delinquencies and past due accounts be presented at the next board meeting.

Motion: A motion was made by Jim Albrecht to approve the financials. With a second from Josh Teigen, the motion carried unanimously.

Current Deal Flow

Jessica provided an overview of the companies who have submitted an application.

Company	Dollar Amount	Credit Display
APT	\$1,000,000.00	In Process
PushSave	\$150,000.00	On Hold
LiftEase	\$100,000.00	In Process
Clubhouse Learning	\$100,000.00	Completed - On Hold
3domFuel	In discussion (\$180,000)	
Premier Refinery	\$1,000,000.00	

The NDDF has 13 other companies who we expect to receive applications from in the future.

Technology Update

Hannah stated that all contracts besides the NDA between Finastra and DCI have been signed. The NDA should be executed by this Friday. She anticipates getting the files by next Monday. We will most likely need to push out the current contract with Finastra to June.

Annual Reviews

Hannah explained that we provided to the board a list of companies for which an annual review was not conducted. The list includes all loans with a balance greater than \$100,000 as of January 1, 2020. The NDDF requires all loans with a balance greater than \$100,000 as of the first of the year to have an annual review performed. The annual reviews were not conducted because of staff turnover, increased deal flow due to COVID, and the requirement of the staff to help with the ERG. Going forward, annual reviews will be performed on all necessary accounts. The staff did conduct annual reviews on the NVCP problem loans.

Bylaws Discussion

Josh provided a document that shows the discrepancies between the century code and the bylaws.

The first conflict is under the Management section.

NDCC 10-30.5-05.

Management. The director of the department of commerce division of economic development and finance shall appoint the chief executive officer of the corporation. The board of directors shall determine minimum qualifications of all other staff positions

NDDF Bylaws – Article 5 Section 1

Full-time Chief Executive Officer (CEO). The Director of the Department of Economic Development and Finance shall hire, with the advice and consent of the Board of Directors, a full-time CEO to handle the management of the corporation. The CEO may sign any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated to the Board of Directors or by these Bylaws, or by statute to some other officer or agent of the corporation. The CEO shall be the principal spokesperson of the corporation and shall perform all acts and duties usually performed by an executive and other duties as may be prescribed by the Board of Directors. The Board of Directors shall determine the minimum qualifications of all staff positions.

Century Code trumps bylaws and changing the bylaws is much easier than Century Code. Josh's proposed action is to strike the clause "with the advice and consent of the Board of Directors" in the bylaws.

Josh also suggests adding "other" before "staff positions" in the last sentence of the section of the bylaws above: "The Board of Directors shall determine the minimum qualifications of all staff positions."

Terri asked if we have consulted with a lawyer to make these changes. Josh stated we have not because we need the board's consent before we do so.

Terri asked why we want to change this. She feels that the NDDF should want the board's input on the hiring process. Josh stated that we are not saying there is not value in the board's opinion, but this is just to make sure the two documents match.

Terri said that the board has always had a role in the hiring of the CEO. She suggested the board have a discussion about what the board's role should be.

In reference to the first statement, Jim does not believe that the bylaws are inconsistent with the Century Code based on the terminology. He does believe there is an inconsistency with the second statement.

Josh explained that he is concerned with the word "consent" in the first statement. He said we can have our legal firm review this.

Jim and Josh both agreed that it is odd that the board would have input on the job qualifications of all positions besides the CEO. Jim suggested adding a sentence at the end of the bylaws that states the board of directors *intends* to determine the qualifications of the CEO position. This would be a non-legally binding statement.

The second discrepancy is with the following highlighted sections:

NDCC 10-30.5-05.

... All investments, contracts, partnerships, limited liability companies, and business transactions of the corporation are the responsibility of the **chief executive officer and the board of directors.** The board may provide that normal operating costs anticipated in an approved budget may be incurred and paid without prior board approval.

NDDF Bylaws – Article 5 Section 2

Business Transactions. All investments, contracts, partnerships, and business transactions of the corporation are the responsibility of the **Board of Directors.** The Board may provide that normal operating costs anticipated in an approved budget may be incurred and paid without prior Board approval.

The passages relating to business transactions and investing authority are nearly identical with a notable exception in century code for the inclusion of the CEO in the responsibility of the corporation's business transactions.

Gary brought up the issue of the lending authority. Josh explained that the lending authority aspect did not have any discrepancies between the two documents. He said he believes the current lending authority of \$150,000 still seems reasonable.

Board Elections

Josh, on behalf of Commissioner Kessel, nominated Jim Albrecht.

Matt Dunlevy nominated Terri Zimmerman.

Jim accepted his nomination.

Terri was unsure about the nomination. She stated she is extremely passionate about the work the board does and has enjoyed her time. She asked for time to think about it to determine if she has the capacity to take on the role and if her company board would be open to her accepting the position.

The board agreed that we will table the discussion and revisit in two weeks at the next board meeting.

Terri suggested following up with Pat Murphy. Pat stated that he was under the impression his term ends in June. He said he is willing to serve out his term, but if there is a willing candidate who wants to take over, he is okay with stepping down early. Josh said we will work with the Governor's office on this issue. Pat's term expired last June, so he can be done whenever he wants to be.

Terri asked for an updated document with each board members' term listed.

The meeting was moved into executive session pursuant to North Dakota Century Code 10-30.5-07 at 11:36 A.M.

Adjourn

With no other business, the meeting was moved out of executive session at 11:42 A.M.

Motion: A motion was made by Jim Albrecht to not sell the Loyalty Builder's shares and stay in the deal. A second was provided by Pat Murphy.

Gary Goplen – Yes, Jim Albrecht – Yes, Matt Dunlevy – Yes, Pat Murphy – Yes, Josh Teigen – Yes, Terri Zimmerman - Yes

Adjourn

With no further discussion, the meeting was adjourned unanimously at 11:46 AM.