



Buffalo and Erie County Industrial Land Development Corporation  
Board of Directors  
May 25, 2016  
@ 10:45 a.m.  
95 Perry Street  
4th Floor – Vista Room  
Buffalo, New York 14203

**1.0 Call to Order**

**2.0 Approval of Minutes**

2.1 Approval of the April 27, 2016 Meeting of the Membership

**3.0 Reports / Action Items / Information Items:**

3.1 Legal RFP (Action Item)

3.2 Financial Report

**4.0 Adjournment - Next Meeting June 22, 2016 at 10:45 a.m.**

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

**DATE AND PLACE:** April 27, 2016, at the Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor ESD Conference Room, Buffalo, New York 14203

**PRESENT:** Hon. Byron W. Brown, Richard Lipsitz, Jr., John Mudie, Hon. Mark C. Poloncarz, Hon. Edward A. Rath, III and Maria Whyte

**EXCUSED:** John Mills

**OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; John C. Cappellino, Executive Vice President; Andrew Schoepich, Treasurer; Karen M. Fiala, Assistant Treasurer; and Robert G. Murray, Secretary

There being a quorum present at 10:49 a.m., the Joint Annual Board of Directors and Membership meeting of the Buffalo and Erie County Industrial Land Development Corporation was called to order by Mr. Poloncarz.

**MINUTES**

Upon motion made by Mr. Rath and seconded by Mr. Lipsitz, the March 30, 2016 minutes of the Board of Directors of the Buffalo and Erie County Industrial Land Development Corporation meeting were unanimously approved.

**REPORTS / ACTION ITEMS / INFORMATION ITEMS**

Legal RFP. Mr. Poloncarz noted that the various general counsel, tax-exempt bond counsel, loan counsel and conflict general counsel, conflict tax-exempt bond counsel and conflict loan counsel positions were all approved at last month's ECIDA and RDC meetings. Mr. Poloncarz confirmed that the motion today is to approve of Harris Beach as general counsel, Harris Beach as tax-exempt bond counsel, Barclay Damon as loan counsel, Hodgson Russ as conflict general counsel, Barclay Damon as conflict tax-exempt bond counsel and Harter Secrest & Emery as conflict loan counsel. Mr. Poloncarz and Mr. Rath stated that they will need to abstain. Mr. Poloncarz noted that, with the abstentions so noted, there are not enough members present to obtain the four required votes to pass any motion and determined to move this item to the end of the agenda pending the arrival of additional board members.

Financial Report. Mr. Weathers presented the ILDC March 2016 financial report, noting net income for the month of March 2016 of \$1,187. On a year to date basis, the ILDC has received \$507 of income and has net income of \$1,027 on a year to date basis. Mr. Poloncarz directed that the report be received and filed.

Annual Report of Directors. As required under the New York State Not-For-Profit Corporation Law and as required under the ILDC By-Laws, Mr. Weathers presented the annual report of the ILDC.

There being no comments, Mr. Rath moved and Mr. Lipsitz seconded to approve of the annual report. Mr. Poloncarz called for the vote, and the annual report was thereafter unanimously approved.

Nominating Committee Update. Mr. Weathers presented the 2016-17 ECIDA/RDC/ILDC proposed board committees and officer positions as recommended by the Nominating Committee. Mr. Mudie moved and Mr. Rath seconded to approve of the committee and officer appointments. Mr. Poloncarz called for the vote and the 2016-17 ECIDA/RDC/ILDC board committees and officer positions were unanimously approved as contained within the slate of committees and officers attached hereto and made a part of these minutes.

Mr. Poloncarz confirmed that, in consideration of the abstentions by himself and Mr. Rath, that there are not enough ILDC board members present to take action on the appointment of legal counsel and stated that he would suspend the ILDC meeting at 10:58 a.m., proceed with the ECIDA and RDC meetings and consider calling the ILDC meeting to order if additional ILDC board members are present at the conclusion of the ECIDA and RDC meetings.

With the addition of Mr. Brown, and Ms. Whyte, and a quorum now being present, Mr. Poloncarz called the meeting to order at 11:31 a.m.

Legal RFP. Mr. Poloncarz confirmed that the ILDC recessed the meeting to allow additional members to arrive and also confirmed that the Legal RFP and the appointment of counsels as proposed and recommended by the Governance Committee was approved by the ECIDA and RDC at their March 2016 meetings. Mr. Weathers then reviewed the following positions as follows:

1. Harris Beach has been recommended to provide general counsel and tax-exempt bond counsel services on behalf of the ILDC. Ms. Whyte moved and Mr. Lipsitz seconded to approve of Harris Beach as general counsel and tax-exempt bond counsel. Mr. Poloncarz and Mr. Brown abstained from voting. Mr. Poloncarz called for the vote and Harris Beach was approved with Ms. Whyte, Mr. Lipsitz, Mr. Rath and Mr. Mudie voting in the affirmative, Mr. Poloncarz and Mr. Brown abstaining and with no votes in the negative.
2. Barclay Damon was proposed to serve as conflict tax-exempt bond counsel and loan counsel. Mr. Poloncarz and Mr. Brown stated they would be abstaining from the vote. Mr. Rath moved and Mr. Lipsitz seconded to approve of Barclay Damon as loan counsel and conflict tax-exempt bond counsel. Mr. Poloncarz called for the vote

and the motion was approved with Mr. Lipsitz, Ms. Whyte, Mr. Rath and Mr. Mudie voting in the affirmative, and Mr. Poloncarz and Mr. and Mr. Brown abstaining and no votes in the negative.

3. Mr. Lipsitz moved and Ms. Whyte seconded, to approve Hodgson Russ as conflict general counsel. Mr. Rath, Mr. Poloncarz, and Mr. Brown stated that they would be abstaining from this vote. It was noted, after accounting for the abstentions, that only three members remained who were able to vote, and that there were not enough members to cast the required four votes to take action. At this point in time, given the numbers, Mr. Poloncarz did not ask for a vote on this appointment.
4. Mr. Rath moved and Mr. Mudie seconded, to approve of Harter Secrest & Emery as conflict loan counsel. Mr. Brown stated he would abstain from the vote. Mr. Poloncarz called for the vote, and the motion was approved by a vote of 5 in favor and zero against with Mr. Brown abstaining.

There being no further business to discuss, at 11:35 a.m., upon motion made by Mr. Rath and seconded by Mr. Brown, the meeting was adjourned.

Dated: April 27, 2016

---

Robert G. Murray, Secretary



95 Perry Street, Suite 403  
Buffalo, New York 14203  
www.ecidany.com  
phone: (716) 856-65

**To:** ECIDA Board members  
**From:** Steve Weathers / Andrew Schoeppich  
**Date:** February 24, 2016  
**Re:** Authority Budget Office (ABO) Legal / Audit Procurement

---

On Wednesday January 27<sup>th</sup>, the ECIDA met with three auditors from the Authority Budget Office as part of their audit of the ECIDA's procurement process for legal and auditing professional services. The auditors indicated that they are auditing 15-16 IDAs across New York and expect to issue a "global" report on IDA procurement of legal / audit services, but not an individual report for each IDA. The ECIDA is the 12<sup>th</sup> IDA they have audited and they expect to be finished with their fieldwork by mid-February with a final report by mid-March.

ECIDA staff had an extensive discussion with the ABO auditors and provided the auditors with the following documents:

- A copy of the ECIDA procurement policy and professional services RFP process
- Copies of the Legal RFP issued in 2008 and the Audit RFP issued in 2012
- A listing of the audit & legal firms that bid and their respective quotes
- Bid responses (9 audit responses & 17 legal responses)
- Ranking sheets utilized by the selection committee to evaluate the bids and a summary of the overall results
- Board memos outlining the reason for the recommendations and approving the selection of the applicable audit/legal firm(s)
- Audit & Legal contracts
- Audit & Legal invoices paid in 2014 with a total that agrees to the filed PARIS procurement reports

After our discussions, the ABO auditor indicated that in many ways, our process is a good model for other IDAs for how these services should be procured. They indicated that they liked many things we did including: that we issued an RFP, advertised and promoted the RFP, included in the RFP how the scoring was to be evaluated, had a selection committee that reviewed and scored the bid results based on the RFP criteria and recommended to a Board committee that provided recommendations to the Board.

They indicated that they don't have any substantive comments or recommendations on our procurement process but that their supervisor may subsequently ask them to include something in the report. They mentioned that they could provide us an email in mid/late-February that would address whether or not there are any significant concerns.

**Erie County Industrial Development Agency & Affiliates**  
**LEGAL REQUEST FOR PROPOSAL**  
**Outline of RFP Process**

**RFP Development/Review:**

The 2015 Legal Request for Proposal (RFP) was developed by ECIDA staff based on the prior RFP and feedback from the 2008 RFP process. A draft of the RFP was distributed to the Governance Committee on July 29<sup>th</sup>, 2015 for review and comments. On August 4<sup>th</sup> the RFP was distributed to the ECIDA Board for informational purposes.

**RFP Notice/Distribution:**

Copies of the RFP were distributed on August 25<sup>th</sup>, 2015 to the top 20 law firms with corporate-related expertise as listed in the Business First "Book of Lists".

Public notices of the RFP were placed in the Buffalo Law Journal, Buffalo News, The Buffalo Criterion, The Challenger News and the ECIDA website. A copy of the RFP was also sent to the Minority Bar Association of WNY. Based on the public notices, three additional law firms not included in the top 20 list also requested and received a copy of the RFP.

**RFP Questions/Responses:**

RFP Questions were due by September 11<sup>th</sup>, 2015. Thirteen questions were received from two law firms requesting further information, primarily related to current counsel fees/hours and conflict of interest matters. The responses were distributed to all 23 law firms and posted on the ECIDA website.

**Evaluation of Responses:**

Eight responses were received on October 1<sup>st</sup>, 2015 with firms bidding for the various positions as outlined in Attachment A.

A committee comprised of five ECIDA staff reviewed the legal bids based on the following criteria (as detailed in the RFP):

- 1) Qualifications and experience of the partners and associates to be assigned to the engagement (40% of total score)
- 2) Fees (25% of total score)
- 3) Qualifications and experience of the firm (25% of total score)
- 4) M/WBE Development (10%)

The staff review committee short-listed the firms as outlined in Attachment A and conducted 11 interviews between October 27<sup>th</sup> and November 19<sup>th</sup> (4 for general counsel, 4 for loan counsel and 3 for tax-exempt bond counsel). Governance Committee members were notified of and invited to attend the interviews. The staff review committee then conducted reference checks on November 23<sup>rd</sup>.

**Governance Committee Review:**

The Governance Committee met on November 30<sup>th</sup> and reviewed the RFP process as well as detailed spreadsheets summarizing the ECIDA staff review committee's evaluations and recommendations for legal counsel. The Governance Committee unanimously recommended the following law firms for approval by the ECIDA Board:

**Board Briefing Sessions:**

Three Board briefing sessions were held on January 6, 12 & 20 to explain the RFP process, the recommendations and answer any Board member questions. These sessions were attended by 11 ECIDA/RDC Board members and six ILDC Board members as well as the staff review committee.

## Erie County Industrial Development Agency Analysis of Hiring an In-house Attorney vs. External Counsel

**Background:** In conjunction with the recent legal RFP, ECIDA staff have been asked to consider the cost and benefits of hiring an in-house attorney compared to engaging external counsel.

**Other IDAs<sup>1</sup>:** Based on salary records for other IDAs, only three of the approximately 110 IDAs in NYS have in-house counsel. The three positions were all part time, and had annualized 2014 salaries of \$3,200, \$14,800 & \$55,300 respectively. Overall these IDAs are much smaller than the ECIDA with 3, 15 and 60 active tax incentive projects, respectively (compared to 275 for the ECIDA)

**Cost:**

<u>In-House Attorney</u>		<u>External Attorney</u>			
Estimated Salary (4-9 yrs experience) <sup>2</sup> :	\$120,000		<u>2015 (est.)</u>	<u>2014</u>	<u>2013</u>
+ Estimated Benefits:	<u>50,000</u>	ECIDA	\$100,000	\$119,000	\$109,000
<b>Total</b>	<b>\$170,000</b>	RDC	<u>25,000</u>	<u>48,000</u>	<u>67,000</u>
+ Estimated External Attorney costs <sup>3</sup> :	<u>50,000</u>	<b>Total</b>	<b>\$125,000</b>	<b>\$167,000</b>	<b>\$176,000</b>
	<b>\$220,000</b>				

**Other Benefits:**

<u>In-House Attorney</u>	<u>External Attorney</u>
1) Dedicated to the ECIDA	1) Provides independent, firm-backed legal guidance
2) Fixed Cost	2) Have back-up counsel in the event of vacations, sick or separation
	3) Variable cost
	4) Discounted legal rates due to size of account

**Other Salary Information:**

<sup>1</sup> Note: The NYC IDA does not have its own in-house counsel, but utilizes counsel of the NYC Economic Development Corp. which has 400+ employees, including 13 attorneys with salaries ranging from \$99,000 to \$190,000 (average salary of \$137,000).

<sup>2</sup> Per Robert Half Legal Salary Guide for 2016 for in-house attorneys at 'small companies' in the Buffalo market, the salary ranges are as follows: 10+ years of service (\$124,213-\$178,125), 4-9 years of service (\$105,925-\$151,763), 0-3 years of service (\$78,138-\$107,113). Also, per one law firm contacted, first year students at their firm start in the low \$90's.

<sup>3</sup> Depending on experience of in-house attorney, additional external legal assistance may be required for various specialized matters including: defense litigation, venture capital, environmental, employment, construction/real estate & lending/collections. Estimated as: 200 hours @\$250/hour



We also obtained salary information from the National Association for Law Placement. Below is an excerpt from their 2015 survey (adjusted for the Buffalo market):

	Natl Avg Firm Size 50 or Fewer w/Applied Market Variance for Buffalo	Natl Avg Firm Size 51-100 w/Applied Market Variance for Buffalo	Natl Avg Firm Size 101-250 w/Applied Market Variance for Buffalo
<b>First Year</b>	\$115,425	\$105,688	\$109,250
<b>Second Year</b>	\$109,250	\$109,725	\$109,250
<b>Third Year</b>	\$127,704	\$112,433	\$114,000
<b>Fourth Year</b>	\$129,081	\$117,373	\$118,750
<b>Fifth Year</b>	\$137,038	\$122,788	\$127,300
<b>Sixth Year</b>	\$118,275	\$128,250	\$133,000
<b>Seventh Year</b>	\$161,500	\$135,945	\$138,225
<b>Eighth Year</b>	\$120,436	\$137,750	\$139,721

**sources:** 2015 NALP Associate Salary Survey; city variances by Office Team

**Diverse Areas of Legal Expertise:**

Over the last two years, ECIDA general counsel have provided legal guidance on a variety of legal matters from the following 40 areas of law:

Bankruptcy/Receivership	HUD law/regulations	Tax Exempt Bond Law
Corporate Law	Open Meetings Law	Tax Law
Not-for-profit-Law	Public Officers Law	Collections
LLC Law	Ethics Law	MWBE Diversity Compliance
Public Authority Law	Freedom of Information Law	Public Service Commission Law
Local Finance Law	General Municipal Law	Brownfield Cleanup Program
Federal Tax Law – on behalf issuer issues	IDA Law	Empire Zone Program
Insurance Law	Commercial Real Estate	Historic Tax Credit
Employment/labor Law	Easement	New Markets Tax Credit
Employee Discrimination – Pay Equity Law	Litigation - Personal Injury	UCC/Banking
Real Property Tax Foreclosure Law	Litigation - Scaffold Law	SEP/Employee Benefits
UDAG laws/regulations	Litigation - Article 78 Defense	SEQRA Compliance
EDA laws/regulations	Litigation - real property tax law	
CDGB laws/regulations	Venture Capital	

**Board Action:**

The Board is requested to approve the President, Executive Vice-President, Treasurer and/or Assistant Treasurer entering into a contract for legal services with each of the following law firms recommended by the Governance Committee consistent with the ECIDA's Professional Services RFP policy, the legal RFP and applicable law firm's bid documents. The term of the contract will be for a period of up to seven years with the ability to cancel with 90-days notice.

**Primary Counsels:**

- |                            |               |
|----------------------------|---------------|
| 1. General Counsel         | Harris Beach  |
| 2. Tax-Exempt Bond Counsel | Harris Beach  |
| 3. Loan Counsel            | Barclay Damon |

**Conflict Counsels:**

- |                            |                        |
|----------------------------|------------------------|
| 1. General Counsel         | Hodgson Russ           |
| 2. Tax-Exempt Bond Counsel | Barclay Damon          |
| 3. Loan Counsel            | Harter Secrest & Emery |

**Industrial Land Development Corp.**  
**Financial Statements**  
As of April 30, 2016

**INDUSTRIAL LAND DEVELOPMENT CORPORATION ("ILDC")**

**Balance Sheet**

April 30, 2016

	<b>April 2016</b>	March 2016	December 2015
<b>ASSETS:</b>			
Restricted Cash *	\$ 255,519	\$ 253,278	\$ 278,808
Loans Receivable, net	4,621	6,039	8,453
Less: Reserve for Loan losses	(141)	(141)	(1,359)
Loan Interest Receivable	25	25	-
Total Loan Assets	<u>4,504</u>	<u>5,923</u>	<u>7,094</u>
Total Assets	<u>\$ 260,023</u>	<u>\$ 259,202</u>	<u>\$ 285,902</u>
<b>LIABILITIES &amp; NET ASSETS:</b>			
Accounts Payable	\$ -	\$ -	\$ -
Due to/(from) ECIDA	167	125	27,862
Interest Payable - HUD	3	39	29
Other Liabilities	-	-	-
Total Liabilities	<u>170</u>	<u>164</u>	<u>27,891</u>
Restricted Fund Balance	<u>259,853</u>	<u>259,037</u>	<u>258,011</u>
Total Liabilities & Net Assets	<u>\$ 260,023</u>	<u>\$ 259,202</u>	<u>\$ 285,902</u>

	<b>April 2016</b>	March 2016	December 2015
<b>* Loan Portfolio Summary:</b>			
# of Loans	<u>2</u>	<u>3</u>	<u>3</u>

\* Cash is invested in interest bearing accounts at First Niagara Bank. The maximum FDIC insured amount is \$250,000 with the remainder collateralized with government obligations by the financial institution.

**INDUSTRIAL LAND DEVELOPMENT CORPORATION ("ILDC")**

**Income Statement**

Month of April 2016

	<b>Actual vs. Budget</b>		
	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>
<b>REVENUES:</b>			
Interest Income - Loans	\$ 10	\$ 8	\$ 2
Interest Income - Cash & Inv.	-	3	(3)
Administrative Fees	-	-	-
Other Income	877	-	877
Total Revenues	<u>887</u>	<u>11</u>	<u>876</u>
<b>EXPENSES:</b>			
Management Fee - ECIDA	\$ 42	\$ 42	0
Provision for Loan Losses	-	-	-
Professional Services	29	17	13
Rent & Facilities Expenses	-	-	-
General Office Expenses	-	-	-
Travel & Meeting Expenses	-	-	-
Other Expenses	-	25	(25)
Total Expenses	<u>71</u>	<u>83</u>	<u>(12)</u>
<b>NET INCOME/(LOSS):</b>	<u>\$ 816</u>	<u>\$ (73)</u>	<u>\$ 888</u>

**INDUSTRIAL LAND DEVELOPMENT CORPORATION ("ILDC")**  
**Income Statement**  
Year to Date: April 30, 2016

	Actual vs. Budget			Actual vs. Prior Year		
	Actual	Budget	Variance	Actual	Prior Year	Variance
<b>REVENUES:</b>						
Interest Income - Loans	\$ 72	\$ 33	\$ 38	\$ 72	\$ 327	\$ (255)
Interest Income - Cash & Inv.	-	10	(10)	-	1	(1)
Administrative Fees	-	-	-	-	-	-
Other Income	1,322	-	1,322	1,322	939,499	(938,177)
<b>Total Revenues</b>	<u>1,393</u>	<u>43</u>	<u>1,350</u>	<u>1,393</u>	<u>939,827</u>	<u>(938,434)</u>
<b>EXPENSES:</b>						
Management Fee - ECIDA	\$ 167	\$ 167	0	\$ 167	\$ 938,667	\$ (938,500)
Provision for Loan Losses	(1,218)	-	(1,218)	(1,218)	(1,799)	581
Professional Services	29	67	(37)	29	160	(131)
Interest Expense	-	-	-	-	-	-
General Office Expenses	-	-	-	-	-	-
Other Expenses	573	100	473	573	-	573
<b>Total Expenses</b>	<u>(449)</u>	<u>333</u>	<u>(783)</u>	<u>(449)</u>	<u>937,028</u>	<u>(937,477)</u>
<b>NET INCOME/(LOSS):</b>	<u>\$ 1,843</u>	<u>\$ (290)</u>	<u>\$ 2,133</u>	<u>\$ 1,843</u>	<u>\$ 2,799</u>	<u>\$ (956)</u>