



Buffalo and Erie County Industrial Land Development Corporation
Board of Directors
June 22, 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 May 25, 2016 Meeting of the Membership

3.0 Reports / Action Items / Information Items:

3.1 Legal RFP – Hodgson Ross General Conflict Counsel

3.2 Financial Report

3.3 Assistant Treasurer Banking Resolution

3.4 Buffalo Niagara Medical Campus, Inc.

4.0 Adjournment - Next Meeting July 27, 2016 at 10:45 a.m.

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

- DATE AND PLACE:** May 25, 2016, at the Erie County Industrial Development Agency, 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203
- PRESENT:** Richard Lipsitz, Jr., John Mills, Hon. Mark C. Poloncarz, Hon. Edward A. Rath, III and Maria Whyte
- EXCUSED:** Hon. Byron W. Brown and John Mudie
- OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; Karen M. Fiala, Assistant Treasurer; Mollie Profic, Assistant Treasurer, and Robert G. Murray, Secretary
- GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist

There being a quorum present at 10:47 a.m., the meeting of the Board of Directors of the Buffalo and Erie County Industrial Land Development Corporation was called to order by its Chair, Mr. Poloncarz.

MINUTES

Upon motion made by Mr. Rath and seconded by Mr. Lipsitz, the April 27, 2016 minutes of the Joint Annual Board of Directors and Membership 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 ILDC needs to approve of the staff and governance committee recommendation of Hodgson Russ, as general conflict counsel, given that the ILDC was unable to approve of this recommendation at its last meeting. Mr. Poloncarz noted that he has received contributions from Hodgson Russ and will be abstaining from participating in the vote. Mr. Rath also stated he too has received contributions from Hodgson Russ and will similarly be abstaining from participating in the vote.

Mr. Poloncarz called for the vote and Ms. Whyte, Mr. Mills and Mr. Lipsitz voted in favor of Hodgson Russ as general conflict counsel. Mr. Murray noted that the ILDC requires four votes to carry any motion, and as such, this motion did not receive enough votes to be

approved.

Financial Report. Ms. Profic stated that monthly income shows a total of \$877 representing interest income and payments received from two previously written off loans, resulting in net income of over \$800 for the month of April. The year to date income statement shows total revenue of almost \$1,400 due mainly to loan recoveries of approximately \$1,322. Total expenses are a negative \$449, due to an adjustment to the provision for loan losses upon collection of payment, resulting in net income of \$1,843 for the year.

There being no further discussion, Mr. Poloncarz directed that the report be received and filed.

There being no further business to discuss, upon motion made by Ms. Whyte and seconded by Mr. Lipsitz, and unanimously approved, the meeting was adjourned at 10:53 a.m.

Dated: May 25, 2016

Robert G. Murray, Secretary

Industrial Land Development Corp.
Financial Statements
As of May 31, 2016

INDUSTRIAL LAND DEVELOPMENT CORPORATION ("ILDC")

Balance Sheet

May 31, 2016

	May 2016	April 2016	December 2015
ASSETS:			
Restricted Cash *	\$ 255,762	\$ 255,519	\$ 278,808
Loans Receivable, net	4,258	4,621	8,453
Less: Reserve for Loan losses	-	(141)	(1,359)
Loan Interest Receivable	25	25	-
Total Loan Assets	4,283	4,504	7,094
Total Assets	\$ 260,046	\$ 260,023	\$ 285,902
LIABILITIES & NET ASSETS:			
Accounts Payable	\$ -	\$ -	\$ -
Due to/(from) ECIDA	208	167	27,862
Interest Payable - HUD	7	3	29
Other Liabilities	-	-	-
Total Liabilities	215	170	27,891
Restricted Fund Balance	259,830	259,853	258,011
Total Liabilities & Net Assets	\$ 260,046	\$ 260,023	\$ 285,902

	May 2016	April 2016	December 2015
* Loan Portfolio Summary:			
# of Loans	1	2	3

* 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 May 2016

	Actual vs. Budget		
	Actual	Budget	Variance
REVENUES:			
Interest Income - Loans	\$ 8	\$ 8	\$ (1)
Interest Income - Cash & Inv.	-	3	(3)
Administrative Fees	-	-	-
Other Income	-	-	-
Total Revenues	8	11	(3)
EXPENSES:			
Management Fee - ECIDA	\$ 42	\$ 42	0
Provision for Loan Losses	(141)	-	(141)
Professional Services	59	17	42
Rent & Facilities Expenses	-	-	-
General Office Expenses	-	-	-
Travel & Meeting Expenses	-	-	-
Other Expenses	71	25	46
Total Expenses	30	83	(53)
NET INCOME/(LOSS):	\$ (23)	\$ (73)	\$ 50

INDUSTRIAL LAND DEVELOPMENT CORPORATION ("ILDC")

Income Statement

Year to Date: May 31, 2016

	Actual vs. Budget			Actual vs. Prior Year		
	Actual	Budget	Variance	Actual	Prior Year	Variance
REVENUES:						
Interest Income - Loans	\$ 80	\$ 42	\$ 38	\$ 80	\$ 357	\$ (277)
Interest Income - Cash & Inv.	-	13	(13)	-	1	(1)
Administrative Fees	-	-	-	-	-	-
Other Income	1,322	-	1,322	1,322	939,826	(938,504)
Total Revenues	1,401	54	1,347	1,401	940,184	(938,783)
EXPENSES:						
Management Fee - ECIDA	\$ 208	\$ 208	0	\$ 208	\$ 938,833	\$ (938,625)
Provision for Loan Losses	(1,359)	-	(1,359)	(1,359)	(1,799)	440
Professional Services	88	83	5	88	160	(72)
Interest Expense	-	-	-	-	-	-
General Office Expenses	-	-	-	-	-	-
Other Expenses	644	125	519	644	100	544
Total Expenses	(419)	417	(835)	(419)	937,294	(937,713)
NET INCOME/(LOSS):	\$ 1,820	\$ (363)	\$ 2,182	\$ 1,820	\$ 2,890	\$ (1,070)

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 29th, 2015 for review and comments. On August 4th the RFP was distributed to the ECIDA Board for informational purposes.

RFP Notice/Distribution:

Copies of the RFP were distributed on August 25th, 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 11th, 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 1st, 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 27th and November 19th (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 23rd.

Governance Committee Review:

The Governance Committee met on November 30th 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 IDAs¹: 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) ² :	\$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
Total	<u>\$170,000</u>	RDC	<u>25,000</u>	<u>48,000</u>	<u>67,000</u>
		Total	<u>\$125,000</u>	\$167,000	\$176,000
+ Estimated External Attorney costs ³	<u>50,000</u>				
	<u>\$220,000</u>				

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:

¹ 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).

² 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.

³ 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
First Year	\$115,425	\$105,688	\$109,250
Second Year	\$109,250	\$109,725	\$109,250
Third Year	\$127,704	\$112,433	\$114,000
Fourth Year	\$129,081	\$117,373	\$118,750
Fifth Year	\$137,038	\$122,788	\$127,300
Sixth Year	\$118,275	\$128,250	\$133,000
Seventh Year	\$161,500	\$135,945	\$138,225
Eighth Year	\$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 |



Buffalo Niagara Medical Campus, Inc.
a 501(c)(3) not-for-profit corporation
BOND SALE INDUCEMENT RESOLUTION
\$53,500,000

HIGHLIGHTS	
<ul style="list-style-type: none"> Eligibility: 501 (c)(3) Not-For-Profit Corporation. 	Project Name Buffalo Niagara Medical Campus, Inc. Project Address: 854 Ellicott Street, Buffalo, New York (Buffalo City School District) SIC/NAICS: 7521/812930
COMPANY INCENTIVES	
<ul style="list-style-type: none"> Tax exempt financing Mortgage tax benefit up to 1% of project amount or \$535,000 	

Agency Request

Issuance of a tax exempt bond and a mortgage tax savings in connection with the construction of a parking garage, to be located at The Buffalo Niagara Medical Campus (“BNMC”)

Company Description

The Buffalo Niagara Medical Campus, Inc. is a consortium of the region’s premier health care, life sciences research, and medical education institutions, all located on 120 acres in downtown Buffalo, New York. The BNMC is dedicated to the cultivation of a world class medical campus for clinical care, research, education, and entrepreneurship. They coordinate activities related to planning, development and enhancement of the 120-acre space, facilitate collaboration among member institutions and the community, and work to create a distinct environment that provides opportunities for active and healthy living.

Project Description

The proposed project involves the demolition of an existing 900 car parking garage which is deteriorated and currently not handicapped accessible. In its place will be a new 1,800 (approximate) space parking garage designed to meet the needs of Oshei Children’s Hospital and Jacobs School of Medical and Biomedical Sciences. The City of Buffalo, as the owner of the property, has entered into a ground lease with BNMC.

The City’s agreement with the company contemplates the following: 25% minority and 5% women workforce goal; 25% MBE and 5% WBE construction spending goal; prevailing wage, local workforce goal of 75%; LEED principles where practicable; hiring of third party construction monitor to ensure compliance; and living wage requirements during operations. The company has also agreed to abide by the ILDC’s prevailing wage local labor policy.

Project Costs

Land/Building Acquisition	\$ 3,250,000
New Building Construction	\$47,350,000
Non-Manufacturing Equipment	\$ 500,000
Soft Costs	\$ 2,400,000
Total Project Cost:	\$53,500,000

Employment

	<u>Retained</u>	<u>Projected</u>
Part Time	2	4

Project History

6/8/2016	Public hearing held. Transcript attached.
6/13/2016	Negative Declaration adopted by the City of Buffalo
6/22/2016	\$53,500,000 Inducement Resolution presented to Board of Directors



Buffalo Niagara Medical Campus, Inc.
854 Ellicott Street, LLC
Briefing Memo
ILDC Tax Exempt Financing
Audit & Finance: June 20, 2016
ILDC Board: June 22, 2016

The Buffalo Niagara Medical Campus, Inc. (“BNMC”) is a consortium of the region’s premier health care, life sciences research and medical education institutions, all located on 120 acres in downtown Buffalo, New York. The BNMC is dedicated to the cultivation of a world class medical campus for clinical care, research, education and entrepreneurship. They coordinate activities related to planning, development and enhancement of the 120 -acre space, facilitate collaboration among member institutions and the community, and work to create a distinct environment that provides opportunities for active and healthy living.

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The City’s agreement with the company contemplates the following: 25% minority and 5% women workforce goal; 25% MBE and 5% WBE construction spend goal; prevailing wage, local workforce goal of 75%; LEED principles where practicable; hiring of third party construction monitor to ensure compliance; and living wage requirement during operations. The company has also agreed to abide by the ILDC’s prevailing wage and local labor policy.

Project Financing:

The anticipated bond amount is \$44,328,500 on a total proposed project cost of \$53,500,000. As of this writing, the M&T commitment is for the following: See chart for bond terms/amortization and interest rates.

	Conversion/Call Date	Amortization	Index/Indicative Tax Exempt Spread	Indicative Tax Exempt Non-Qualified Rate (as of 6/2/16)
Construction Period (Facility A&B)	Up to 24 months from closing	Interest Only	Floating at 67% of the 1-month LIBOR +1.91%	2.25%
Facility A – Permanent Period (Post-Construction) \$37,053,762	8 years from the conversion date	33 years	Variable Option: Floating at 67% of the 1-month LIBOR +1.74% Fixed Option: fixed at 67% of the 8-year cost of funds +1.74%	2.08% 2.79%
Facility B – Permanent Period (Post-Construction) \$7,274,738	8 years (maturity date)	Up to 15 years	Variable Option: Floating at 67% of the 1-month LIBOR +1.74% Fixed Option: Fixed at 67% of the 8-year cost of funds +1.74%	2.08% 2.79%

ILDC issued bonds are not an obligation of the ILDC, ECIDA or County.