

**City of Newburgh
INDUSTRIAL DEVELOPMENT AGENCY
("IDA")**

**MINUTES OF MEETING
June 8, 2009**

Present

Board Members: Richard Bedrosian
Michael Curry, Treasurer
Sean O' Shea
John Penney, Secretary
Joshua Smith, Vice-Chairman
Jerry Maldonado
Thomas Whyatt, Esq., IDA Counsel

Excused Absence: Spencer Gulliver, Chairman

1. Roll Call taken by JS
2. Proof of Notice. Accepted.
3. Approval of May 5th and May 6th, 2009 Minutes of Meetings. E-mail Changes to be incorporated into each document. JM: Motion to Approve Minutes with corrections. MC: Seconded. **VOTE: Minutes unanimously approved, as amended.**
4. Request for Bills & Communications: MC: Bills from CK Boyle (\$250), Oxman, Tulis (approximately \$11,000). To be discussed during treasurer's report. Acting City Manager – we're part of a legal action (Bourne & Kinney Apartments).

Letters & Communications: Interim City Manager notified IDA that it is part of a legal action regarding the Bourne & Kinney Apartments. Letters from Mr. Weiss (Foundry), Mayor Valentine, e-mail from Charles Emberger, letter from Office of State Comptroller, resignation letter from Ms. Zapata, notice from Omnipoint re purchased by T-Mobile; 3 statements , which are still billed to the City of Newburgh.

[Board moves Agenda Items to accommodate Leyland and Foundry project guests.]

Foundry Development Group ("FDG") represented by Mr. Weiss and his attorney, Mr. Krogan. TW: IDA approved extension of commitment date for Foundry III coop units. One of the loan conditions to the Sponsor (FDG) was that CofO's for 59 units be completed by 9/30/09. Mr. Weiss seeks a 2- year extension to Sept. 30, 2011. At the May 5th IDA meeting, IDA Board requested a draft resolution of certain issues. Messrs. Weiss and Krogan are seeking extension approval without the conditions sought by IDA's draft resolution. Mr. Krogan: Lending Bank will not accept the conditions. FDG agrees to pay all costs. We'd prefer this not be a condition, not subject to the agreement. Weiss agrees to all of your conditions, but doesn't want them included in the agreement. Ownership has been corrected. Foundry Development Group, not FDC (former owner). TW: chain of title has been corrected. JM: Can sticking points be put in a separate letter in order to move forward so that bank can complete the loan? TW: purpose of conditions was to trigger potential economic exposures that would need to be worked out. JP: are you waiting for resolution of the Attorney General's investigation and the homeowner's association concerns? Mr. Krogan: Attorney General's office is investigating. FDG filed sponsorship papers. There are issues of water consumption payments, and how dues will be calculated. AG is looking into Courtyard issues, square footage issues. When we took ownership, framing was incomplete on many units. Mr. Weiss: We are cooperating fully with AG's office. MC: you are sponsors of Foundry III only. JM: This is time sensitive. Can we go through 6 issues and identify resolutions?

- Item #2. JM: IDA needs structured updates for the two-year duration. Quarterly or semi-annually benchmarks need to be identified. MC: IDA's interest is in the reverted. We'd be extending for 2 years before we would take any action. JM & MC: Clarify the September 15 deadline. TW: it gives the Board 2 weeks to verify that the 6 points have been met and to sign the extension. There can be a "Whereas" clause that applicant has agreed to report on a regular basis. "Whereas" is scene-setting without triggering problems with the Lender. DB: recommends quarterly, rather than semi-annual updates. Board concurs. Mr. Weiss offers to lead quarterly on-site visits supplemented with a written report. SO: Reports should address update on Attorney General's Investigation. Mr. Krogan agrees to such updates but requests that there be no AG language in the letter to Lender.
- Item #3. AG Updates have been offered, so remove this as a condition.
- Item #4. TW: Financing Agreement between IDA and Bank will need to be renegotiated. at Mr. Weiss' expense, which he has agreed to. This can be deleted as a condition.
- Item #5. This is an internal IDA authorization matter; does not need to be a condition; strike it.
- Item #6 This was dependent upon the other 5 conditions, but since we are striking the others, this can be deleted.

JM: Motion to Approve revised resolution as modified in consultation with our attorney and to be executed by chairman or vice-chairman. SO: Seconded: **VOTE: Unanimously Approved.**

Treasurer: For The Record, an Application Fee of \$1350 (check to IDA) has been received from Mr. Weiss on behalf of FDG.

Leyland: E. Parmenter Street Project: Mr. Lou Marquette present.

TW: Loan Application was originally worked out by City Council and Leyland Alliance for \$300,000 reimbursing them for work done. Corp. Counsel advised IDA that City was not in position to make this loan. Council asked IDA if they would accept the \$300,000 as a revolving loan fund. Board agreed at 5/5/ meeting to undertake the loan program. TW hasn't had chance to review documents prepared by Leyland at TW's request. Development Agreement, Note, Mortgage, etc. need to be reviewed by TW to conform to IDA development agreements and other paperwork. TW is not prepared to approve agreements.

JM: Timing for review and turnaround of documents? TW: a few hours in City Hall. JP: who does TW need to see? TW: needs access to files. Full file of Carchietta mortgage would be helpful as models. MC: how much administrative time for ramp-up? TW: Application Fee of \$1250 for internal work and TW's on-going monitoring. Each lot sold requires a Release Document. Mr. Marquette: Monthly Payments plus interest monthly. At each lot sale, a lump sum of \$18,750 (1/16th of total). LOU: \$300,000 Loan, 3-year term @ 5% monthly. Loan is second behind purchase money mortgage or construction loan financing. TW: is it a recorded second or subordination agreement? JM: who pays legal expenses? Leyland will pay legal fees. City's internal counsel did prior work.

Mr. Marquette: pressing issues. Albany Savings Bank has extended its commitment a few times; we don't want to lose them. Habitat is also being squeezed because they have to sell a few units. Need to get started this month. Asks for Carchietta Note and Mortgage. TW: will try to get files this week. Note, Mortgage, Approval Resolution and other IDA paperwork needed on that deal. JP: available to assist. TW: If Development Agreement terms are acceptable to Board, TW will prepare documents and Board can authorize Vice-Chair to sign. DB: not clear – is \$300,000 passed through from city to IA? TW: it is a revolving fund that we are administering. That's our only role.

JM: Motion to accept draft agreements, Note and Mortgage, subject to counsel reconciling with previous IDA agreements. DB: Seconded. **VOTE: Unanimously Approved.** (TW: Title Company for Lender will also insure for IDA and Leyland will pay fee).

Mr. Marquette will deliver the \$1250 Application Fee to City of Newburgh IDA Treasurer in the next few days.

5. Treasurer's Report

- Bank Accounts: \$198,661.55 in Key Bank operating account. Bank of America: \$6,141.41 on 4/1. \$18.55 service charge.
- During Audit Committee Meeting, approved \$250 to Boyle, and \$11,382.50 to Oxman, Tulis, covering April 15 – May 15. JM: concerned about legal expenditures. TW: This is catch-up; IDA will be set-up and operating soon. DB: necessary expenses, considering kind of work and lack of cooperation. SO: issue isn't legitimacy, but size of expenses and how long can we continue. JM: just concerned that over a period of months, this will exhaust our budget. JS: we had no attorney in the past. MC: large portion of current bill is a legal action cost to recoup moneys IDA thinks is ours. JM: help us project legal expenses; isn't there a reasonable expectation of legal fees. JS: Auditor can't certify because he has no numbers. MC: we continue getting surprise notifications that the IDA is a party to legal actions. JM: \$175,00 until end of year. We underestimated our original legal expense projections. We need to make reasonable projections. SO: we're talking about the two accounts that we control, not the possible recouping. DB: we have to reimburse the City for 30% of staff time, but we also have income from cell towers, for example. Preliminary Budget Projections to be discussed at next Audit Committee Meeting.

Audit Committee Meeting Scheduled for Monday, June 22, 6:30pm. JM to attend.

MC: Motion to pay K. Boyle. JP Seconded. **VOTED: Unanimously approved.**

MC: Motion to pay Oxman, Tulis. DB seconded. **VOTED: Unanimously approved.**

6. Audit Committee: MC recap of meeting with Mr. Levy, Auditor. Noted difficulties in obtaining records from Economic Development Office. This will be documented in Audit Letter, since IDA was paying 100% of salaries. There was an Operating Deficit of approximately \$606,000 in prior year. DB: Document needs to stand on its own. It's nothing to do with our tenure. JS: Mr. Levy was helpful in instructing what auditor needs to add to the document. TW: he owes us a lot of documents to verify where he got his figures. Mr. Levy had never encountered situation in which people hiring him would not be willing to assist. No "auditor language" templates for uncooperative clients. If this IDA Board is to be put back into "qualified position" to provide tax benefits, ABO and State Controller's office, will need to believe that this board is on top of its finances. This will be difficult if all we have are uncertified numbers. MC: Unhappy that we are paying \$12000 for audit (Bob McKenna hired). Mr. Levy is also City's auditor and his letter will also show City's weaknesses. DB: Since Mr. Levy said he's also doing City's Audit; he'll look for info that is pertinent to IDA. TW: Mr. Levy says there's a \$2,142, 150 IDA liability to the City shown on City's books.

TW: Economic Development Agency receivables: there is 2-year dispute (per Lourdes) regarding Archeological Study required to release funds for cleanup of Walter Lambert/West Street Project. Here's Money for IDA if final work is completed and submitted to EDA.. \$374,000. MC: Pass-thru loan of \$1.2mm (now \$858,000) re clean-up of West Street property. Clean-up is done. IDA is awaiting grant. EDA has asked for Archeological Study on the land before releasing funds. Someone on behalf of the City stated land has been disturbed for so long that no Archeology Study is required. JM: How can we move it forward? TW: normally, your staff person would call the engineer or whomever and work out resolution. There's a lot of money waiting for IDA. MC: I recommend hiring a staff person who is willing to work on behalf of the Board. JS: project construction isn't even completed. McKenna stated that tenants would occupy the site by the end of December 08. There aren't even studs up yet.

7. Governance: JM: we have final edits to draft of By-Laws which will be sent to entire Board. What is distinction between Code of Conduct/Ethics Policy. Reviewed Policies: Property Disposition, Guidelines, Strategic Financial Assistance Policy, Whistle-blower policy and all of the other templates. What is role of Contracting Officer (basically the Administrative Director)? Committee recommends some restrictive language. TW: Board must approve any conveyances, so that's covered. MC: we're concerned about things such as RFP's. TW: at some point the Admin Director needs to be able to take some actions without board resolutions. You don't want to hamstring the position. JM: We don't want to micromanage, and we want to move to a functional Board. We're making good progress, and we're near consensus.

MC: reminder that it is the Audit Committee's responsibility to set internal control policies, so these concerns should conform to those policies.

Staffing Recommendation: DB would like executive session to discuss staffing person search.

JM: Job Description required and still to be done.

8. Unfinished business:

- Accounting Services. MC: No need to look for accounting services until current audit is done.
- RFP's. MC: Blackout period for board members when RFP's are out. We need a staff person.
- Transfer of Files. JS: Files have been transferred. We removed files from Trailways Bus Station in New Paltz and they are stored in Heritage Center.
- Director's Insurance. JS: nothing was done by former Administrative Director.
- Authority Budget Office Letter. JS: we need to begin drafting our request letter. The auditor's letter that we'll be getting is astounding. I've never seen anything like this in my entire career. JM: do we wait to communicate to ABO, or send now? TW: Audit with a few changes to caveats will be acceptable, per ABO. Wait until final language and caveats are in place to send along to ABO.
- PARIS Reporting. MC: I will be logging in, since we have no Administrative Director. TW; you won't have numbers to fill in the blanks.
- Cell Tower Lease Agreements: postponed to next meeting since we don't have the agreements.
- T-Mobile Lease Payments. MC: checks will be coming from Omnipoint, which bought T-Mobile.

9. Business Project Leads (Prospects).

- JS: we've been approached re possible projects. For example, a medical equipment company OndaMet. Negotiations with the County IDA came through, but this was a possible 70 job creation in Newburgh. Another Lead: manufacturer in Newburgh wants to expand into green technology. What can we do when we're not certified? There have been no constructive leads from our Staff since we were appointed.
- Verizon Building. MC: (Grand St./Liberty across from Heritage Center) might possibly be available. They're only using a small section. They had offered it to the City for a nominal amount. City turned it down on advice of former engineer (asbestos issues). Nothing material has changed. Possible opportunity to lease or sell with PILOT. JM to follow up. A key location and useful to at least look at the property.
- JP: I have a lead, but told them to send information, but we can't do anything. TW: you can't give tax benefits, but you can do loans, if you have the money. IDA should be pushing for ideas and leads and be efficient about it. MC: KNEC might have additional funds which IDA could administer for City.

10. Real Estate: JS: requested City's GIS coordinator to prepare IDA property map. Large map combines City and IDA properties. However, Scobie Drive properties are not identified as IDA properties. Discussion of discrepancies among Economic Development Department, IDA, CDA, GIS, Assessor, Water Department and County lists. JM: we still have no updates on properties such as Lake Street, and other requests we made.

TW: Title company can pull recorded County documents. DB: contact county and school departments requesting list of properties owned by IDA.

JM: Title Company work is a worthwhile expense.

TW: will get quote for confirming property list at County Level. Deeds are filed with the County.

- IDA Reverters. JS: No information yet, but at least we have a list now to compare with the map. DB: will draft a letter.
- Pierces Road/Scobie Drive. JS: still an issue. JP. We have to watch this because the NCAC is coming before the City Council. Board: City should not work with certain developers.
- Murphy's Ditch: TW had requested their attorney to make a proposal. They did not get back to him. TW will call again and request payment proposal for next meeting.
- 150 Ann St. – Polonia. TW: is this an active project? Board: no

- Corwin Court: #1 – reassessed – they can abandon the PILOT and pay taxes, or come to IDA and renegotiate PILOT agreement to match the lower taxes. Lessee wants to be on agenda for next meeting. JM: what is benefit to City? TW: either invite him to hear his pitch or tell him IDA is not interested. DB: important to meet the people we are dealing with. Board agrees to invite Ron Cosser to the July 13 meeting.

NEXT IDA BOARD MEETING SCHEDULE FOR JULY 13. Location to be determined.

Next Governance Committee: June 29, 7pm Downing Park or Library

JS: Motion to adjourn public meeting and move to Executive Session to discuss litigation. JP Seconded.

VOTE: Unanimously approved. Meeting Adjourned.