

**CITY OF NEWBURGH
INDUSTRIAL DEVELOPMENT AGENCY
("IDA")
MINUTES OF MEETING
NOVEMBER 15, 2010, 7:00P.M.**

Present

Board Members: Richard Bedrosian, Vice Chair
Michael Curry
John Penney
Sean O'Shea
Jerry Maldonado

Excused Absence: Spencer Gulliver, Josh Smith

Administrative Director: Edward Lynch

Counsel: Thomas Whyatt, Esq.

City Corporation Counsel: Bernis Nelson, Esq.

Guests: Mr. Gottlieb and Mr. Drake (CFO and counsel for Unitex)

1. **Roll Call.** Mr. Bedrosian called the roll; a quorum was present.

2. **Proof of Notice of Meeting.** Accepted.

3. **Approval of Minutes of November 1 Meeting**

Mr. Penney: Motion to Approve the November 1 Minutes as corrected.

Mr. Maldonado: Motion Seconded

Vote: Unanimously approved.

4. **Request for Bills and Communications:** Mr. Curry reported invoices from K. Boyle for September and November 1st for \$250), and one invoice from Oxman, Tulis for \$4,620. Robinson and Cole, and Harris Beach will bill separately. The St. Luke's Parking Garage Bond Swap closing is scheduled before November 30; final attorney bills will be settled then. Mr. Lynch advised that all incoming mail is scanned and distributed appropriately. The Board received a copy of the contract from the State that had been executed with NCAC acknowledging that all reports, maps, designs, plans, and documents are to be transferred to the State. As such they are then public record and FOIL-able. Mr. Whyatt noted that a further Notice of Default regarding Gemma, dated November 9th, was received from counsel to the Trustee, Wells Fargo.

5. **Reports of Committees**

Governance Committee: The Board reviewed the Draft Strategic Financial Assistance Policy. The language was revised to read: "(a) high quality employment and access to regional employment opportunities for Newburgh residents." Mr. Curry suggested the possibility of transportation sales tax exemptions for rolling equipment that would be incentives to transport Newburgh workers to jobs outside of Newburgh.

Mr. Maldonado: Motion to approve the Strategic Financial Assistance Policy as revised.

Mr. Curry: Motion Seconded.

VOTE: Unanimously approved.

Mr. Lynch will arrange to add it to the website's Governance Policies

Audit Committee: Mr. Curry reported that the 2008 Audit materials were sent to Sedore. The State has indicated that 2008 needs to be posted online as soon as possible. Mr. Curry will follow-up with Sedore to finalize the audit and remove the 'draft' stamp. Sedore has not commented on the Management Response letter.

The 2009 Audit Agreement with Sedore has been signed; the audit needs to be expedited. The 2010 Audit will be due March 30, 2011. Mr. Curry will ask Sedore for a quote; the Board discussed the appropriateness of keeping or changing auditors. The individual person must be changed after two years, but the same firm can be hired. Bond schedules with payoff amounts need to be current for PARIS compliance. Mr. Whyatt suggests drafting a letter to send to each bond counsel to report on each bond outstanding.

Mr. Curry is reconciling files and asked for additional administrative time from K. Boyle. The IDA's archiving policy should mirror the City's.

Treasurer's Report: The account balance stands at \$355,829.44; there are no deposits reported in the last two weeks. The Bank of America account is \$5686; the LNA principal payments account holds \$250. Mr. Curry presented two invoices, as reported above, for payment. September and October ledger sheets were distributed. Mr. Curry presented invoices for payment.

Mr. Penney: Motion to pay two invoices.

Mr. O'Shea: Motion Seconded.

VOTE: Unanimously approved.

6. Old Business.

Interagency Agreement (Administrative Services Agreement). The contract was amended to pay for services after they are rendered, instead of 'in advance'. The annual amount is \$45,495. Mr. Lynch gave the percentage breakdowns for use of employees' times. IDA payments exclude benefits.

Mr. Curry: Motion to approve the Agreement as amended.

Mr. Penney: Motion Seconded.

VOTE: Unanimously approved.

EDA Check Award. The Administrative Director must approve the Petition for Reimbursement as well as the City. The exact amount is \$858,345.00. The final step is the Agreement to amend the original grant to restate the figures for the actual work done and eliminate the incubator language. Mr. Lynch presented Resolution No. 2010-11-15A for reimbursement.

Mr. Maldonado: Motion to authorize Administrative Director to sign the Resolution.

Mr. Penney: Motion Seconded.

VOTE: Unanimously Approved.

See Resolution No. 2010-11-15A attached to the Minutes and made a part thereof.

M&T Bank/ GEMMA Development Corporation LLC ("GEMMA") Bond.

Mr. Whyatt sent the FOIL request to Orange County for information on what led the County to send payments to GEMMA instead of the Trustee for three months. There is no response from the County as of this date. Copies were sent to the Attorney for Bondholders and Trustees as well. The Trustee has asked the IDA to send a letter of support to M&T. The Board authorized Mr. Whyatt to

draft a letter to be signed by either the Administrative Director or the IDA Chair in agreement with the Bondholders and Trustees to release the property from all encumbrances.

Website Update. Mr. Maldonado volunteered to construct a page with general information and photographs until such time as an RFP is prepared. The web page is basically needed as a marketing tool for now.

- **IRS Audit.** Mr. Whyatt distributed the report from Robinson Cole on the status of the IRS Audit of the Parking Garage. Mr. Lynch reported that the IRA Auditor will not complete this audit until early in 2011.

Signage for IDA Properties: There is no update at this time.

7. **Bookkeeper Position.** Posting and interviews will be expedited. Mr. Bedrosian will edit the word document.
8. **RFQ for Scobie Drive Environmental Clean-Up.** Mr. Lynch reviewed the Sterling Environmental report previously done for Arnoff Moving. Soil borings and analysis were done for the entire site. Mr. Lynch recommended analyzing the clean-up for both City and IDA sites together, rather than separately. A clean-up budget needs to be prepared in order to apply for remediation funds. Ian McDougall gave an overview with GIS maps of the clean-up options. The lease expensive option for the DuPont site clean-up is \$16mm. The DPW boundary has barrels and First Environment did some initial analysis. DuPont Stouffer has signed a Consent Order with the EPA to remove the barrels from the Newburgh landfill. The IDA parcel had three studies. First Environment did the initial studies. Phase I and Phase II studies were done by HPR and were distributed to the IDA Board. Mr. Maldonado asked for, and Ms. Nelson provided a brief summary of how the Hudson Valley Lighting negotiations for the site ended.

Mr. MacDougall recommended cleaning up the site in order to increase its value for sale. He urged that the City and IDA apply to the BCP program for funding and closely monitor the NCAC grant results. There are four funding options: Federal Level is an EPA Cleanup Grant (\$200,000 per year). State has 3 sources: ERP program (pays for 90% cleanup and 100% for migrated contamination). Brownfield Cleanup Program ("BCP"), a volunteer program. A potential developer can get 20% tax credit. An Agreement is transferrable so the City and IDA could kick-start the program. A third state option is the BOA, of which NCAC is beneficiary of a significant BOA. NCAC is at the Nomination State study. The Implementation Stage includes engineering, drawings, zoning regulations, schematics). The City and IDA should take advantage of the NCAC study.

Mr. Curry presented a bio-filtering clean-up discussion. The lessee would create soils meeting DOT and organic specs, and remove and recycle metals and concrete. They would use all yard waste collected by the City. This would be at little or no cost to the IDA and would be a 3-4 year process, creating 5-6 jobs. The lessee would acquire 2 acres of property at the end of the process. Mr. Lynch and Mr. MacDougall recommended cleaning up both the DPW and IDA sites with grant moneys before giving away lands. Mr. Lynch recommended that the proposer should be attending WRT and NCAC meetings as it tries to identify light industries that would employ many people. The consensus is that the clean-up needs to be addressed. Mr. Whyatt suggested that with the current information, an engineering firm should make a clean-up proposal, regardless of cost. Mr. MacDougall will send a summary of the grant options to the IDA. Mr. MacDougall will bring a representative from CT Maile to December meeting

9. **Unitex.** Ms. Nelson introduced Steve Gottlieb and Richard Drake. At the 2006 closing PILOT was not executed at the time of the closing. Mr. Whyatt received confirmation from the ABO that IDA has the authority to execute same. Ms. Nelson explained the work out of a 485-B equivalent

and explained the calculations based on a Certificate of Occupancy issued in 2008 and retroactive amounts for County School and City beginning in 2009. The PILOT agreement has been agreed by the County. Mr. Drake questioned Section 3.01b Limited Obligations/No Recourse. There was an attorney discussion of the "and/or" consequences of wording in 4.02 Remedies on Default.

Legal fees incurred by the IDA should be borne by the applicant (3-4 hours of attorney time, under \$1000). Mr. Gottlieb says they paid \$180,000 at the time of the original agreement, including bond counsel and IDA fee. Mr. Gottlieb will send a copy to the Treasurer. Mr. Drake noted that he had to provide all the documents to the IDA. Ms. Nelson reviewed and corrected calculations used for preparing the Resolution. Current market value was used to calculate each year taxes for city, school and county. The Resolution was amended to add "after 2010".

Regarding the Tax Exemption Policy, Mr. Whyatt noted that in adopting the Resolution, the IDA took into consideration issues allowing it to deviate from Section D of its policy so as to enter directly into the program with the applicant. Mr. Whyatt read the following statement into the Minutes:

"Findings adopted by the Agency with respect to approval of a PILOT Agreement with Unitex:

Section A of the Agency's Uniform Tax Exemption Policy provides that the Agency does not enter into PILOT Agreements itself, but instead refers applicants to the individual taxing jurisdictions for the purpose of entering into individual PILOT Agreements. Section D of the Policy, however, provides that the Agency may deviate from the Policy under certain circumstances, in which case it will notify the individual taxing jurisdictions of such deviation.

In accordance with Section D of the Policy, therefore, the Agency hereby determines to deviate from provision of Section A of the Policy, so as to enter into a direct PILOT Agreement with Unitex, for the following reasons:

- (1) The Agreement is retroactive as well as pro-active, and is entered into voluntarily by Unitex, which has asked, for purposes of efficiency and ease of monitoring, to work directly with the Agency and enter into a single agreement with the Agency, rather than working separately with each of the individual taxing jurisdictions. Due to the voluntary nature of the Agreement, the Agency finds it appropriate to grant this request.
- (2) The individual taxing jurisdictions have been notified concerning the proposed PILOT Agreement and have consented to the proposal. They will be sent written confirmation of the Agreement after it has been fully executed.
- (3) Entry into the PILOT Agreement encompassing all taxing jurisdictions in one Agreement will benefit the jurisdictions by hastening their receipt of payments for taxes due to date."

Mr. Penney: Motion to adopt Resolution No. 2010-11-15B (115 Dixon St.)

Mr. O'Shea: Motion Seconded

VOTE: Unanimously Approved.

10. New Business.

- Land Bank Committee and Armory Sustainability Committees. Mr. Penney volunteered to participate in those committees on a volunteer basis and to keep the IDA informed until such date as the Board might be required to be formally involved.
- Hudson Valley Federal Credit Union has applied for a building permit to repair the sidewalk at 2 Corwin Court. This requires IDA Board approval.

Mr. Curry: Motion to Approve.

Mr. Penney: Motion Seconded.

VOTE: Unanimously Approved.

11. Next IDA Meeting. The next regularly scheduled meeting is December 20.

Mr. O'Shea: Motion to Adjourn.

Mr. Penney: Motion Seconded.

Vote: Unanimously approved.

Motion By: Mr. Maldonado
Seconded By: Mr. Penney

RESOLUTION No. 2010-11-15-A

Resolution Authorizing The Administrative Director to Execute a Petition for Reimbursement regarding EDA Grant No .01-01-07839

The following Resolution No. 2010-11-15-A was duly put to vote on roll call, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Joshua Smith			X	
Richard Bedrosian	x			
Michael Curry	x			
Spencer Gulliver			x	
Jerry Maldonado	x			
Sean O'Shea	x			
John Penney	x			

The resolution was thereupon duly adopted.

(Resolution No. 2010-11-15-A follows below.)

Motion By: Mr. Penney
Seconded By: Mr. O'Shea

RESOLUTION No. 2010-11-15-B

Resolution authorizing the execution of a Payment in Lieu of Taxes agreement regarding 115 Dixon St. ("UNITEX").

The following Resolution No. 2010-11-15-B was duly put to vote on roll call, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Joshua Smith			X	
Richard Bedrosian	X			
Michael Curry	X			
Spencer Gulliver			X	
Jerry Maldonado	X			
Sean O'Shea	X			
John Penney	X			

The resolution was thereupon duly adopted.

(Resolution No. 2010-11-15-B follows below.)

RESOLUTION NO.: 11-15-A.2010

OF

November 15, 2010

A RESOLUTION AUTHORIZING THE ADMINISTRATIVE DIRECTOR TO EXECUTE ANY AND ALL LETTERS, AGREEMENTS, INSTRUMENTS, AND ASSOCIATED DOCUMENTS NECESSARY TO TERMINATE FOR CONVENIENCE AN ECONOMIC DEVELOPMENT GRANT FROM THE ECONOMIC DEVELOPMENT ADMINISTRATION OF THE U.S. DEPARTMENT OF COMMERCE

WHEREAS, the City of Newburgh Industrial Development Agency, by Resolution No. 1, dated May 27, 2003, authorized the Administrative Director to accept an Economic Development Grant from the Economic Development Administration of the U.S. Department of Commerce ("EDA") to support the creation of a Medical Technology Office Park through the construction of an access street and associated water and sewer infrastructure and the construction of a Medical Technology Incubator Building (collectively the "Award") on properties owned by the City of Newburgh and the Newburgh Industrial Development Agency; and

WHEREAS, the EDA has determined that the Award should include only the construction of the access street and associated water and sewer infrastructure, that the Award should be terminated for convenience, and that the EDA may participate in reimbursement of any eligible costs incurred by the City of Newburgh and the Newburgh Industrial Development Agency to date in the approximate amount of \$858,345;

NOW, THEREFORE, BE IT RESOLVED, that the City of Newburgh Industrial Development Agency hereby authorizes the Administrative Director execute any and all letters, agreements, instruments, and associated documents necessary, including the annexed proposed Amendment to the Contract, to terminate for convenience an Economic Development Grant from the EDA and to obtain reimbursement of any eligible costs incurred by the City of Newburgh and the Newburgh Industrial Development Agency to date in the approximate amount of \$858,345.

RESOLUTION NO.: 11-15 2010

OF

NOVEMBER 15, 2010

A RESOLUTION AUTHORIZING THE ADMINISTRATIVE DIRECTOR OF THE CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY TO EXECUTE A RETROACTIVE AND PROSPECTIVE PAYMENT IN LIEU OF TAX AGREEMENT DATED OCTOBER 16, 2006 WITH FIFTH GENERATION REALTY, INC., TOGETHER WITH ANY AND ALL LETTERS, AGREEMENTS, INSTRUMENTS, AND ASSOCIATED DOCUMENTS NECESSARY TO FACILITATE SUCH PAYMENT IN LIEU OF TAX AGREEMENT, FOR THE UNITEX PROJECT LOCATED AT 115 DICKSON STREET, CITY OF NEWBURGH, ORANGE COUNTY, NEW YORK KNOWN AS SECTION 43, BLOCK 1, LOT 9.2 ON THE TAX ASSESSMENT ROLL OF THE CITY OF NEWBURGH

WHEREAS, on October 16, 2006, the City of Newburgh Industrial Development Agency ("IDA") provided financial assistance to Fifth Generation Realty, Inc. ("Fifth Generation") for construction and equipping of the Unitex healthcare laundry and linen service Project ("Project") located at 115 Dickson Street, City of Newburgh, Orange County, New York, known as Section 43, Block 1, Lot 9.2 on the tax assessment roll of the City of Newburgh ("Project Premises"), including but not limited to exemptions from real property taxes, sales taxes, and mortgage taxes, for a ten (10) year Lease term terminating on October 16, 2016; and

WHEREAS, the IDA and Fifth Generation wish to enter into a retroactive and prospective Payment in Lieu of Tax Agreement ("PILOT") for the term of the ten (10) year Lease; now therefore

BE IT RESOLVED, that the Newburgh Industrial Development Agency hereby authorizes its Administrative Director to execute a retroactive and prospective Payment in Lieu of Tax Agreement dated October 16, 2006 with Fifth Generation Realty, Inc., together with any and all letters, agreements, instruments, and associated documents necessary to facilitate such Payment in Lieu of Tax Agreement, for the Unitex Project located at 115 Dickson Street, City of Newburgh, Orange County, New York known as Section 43, Block 1, Lot 9.2 on the tax assessment roll of the City of Newburgh, with PILOT payments for Land, Improvements, and Additional Facilities to each of the Taxing Entities to be as follows:

1. PILOT payments for Land shall equal one hundred (100%) percent of the Normal Tax due each Taxing Entity with respect to the Land, were the Land taxable, except that in no event shall such payment for Land in any given year after 2010 be less than or exceed the product of Two Hundred Eighty-One Thousand one Hundred (\$281,100) Dollars, being

the Assessed Value of the Land on the 2010 Assessment Roll, multiplied by the applicable tax rate or rates of each such Taxing Entity for such year;

2. PILOT payments for Improvements (being improvements heretofore added to the Project Premises) shall be an amount equal to the applicable percentage of the Normal Tax due each Taxing Entity with respect to the Improvements for such tax year, as shown in the following table, except that in no event shall such payment in any given year be less than or exceed the product of Three Million Sixty-nine Thousand Seven Hundred (\$3,069,700) Dollars, being the Assessed Value of the Improvements on the 2010 Assessment Roll, multiplied by the applicable tax rate or rates of such Taxing Entity for such year, multiplied by the applicable percentage; and

Assessment Year (School Tax Year- City-County Tax Year)	Land Assessment of	County and Town Tax Percentage of Assessed Value of Improvements	School Tax Percentage of Assessed Value of Improvements
2009 (09/10 - 10)	100%	50%	50%
2010 (10/11 - 11)	100%	57%	57%
2011 (11/12 - 12)	100%	64%	64%
2012 (12/13 - 13)	100%	71%	71%
2013 (13/14 - 14)	100%	78%	78%
2014 (14/15 - 15)	100%	85%	85%
2015 (15/16 - 16)	100%	92%	92%
2016 (16/17 - 17)	100%	100%	100%
Thereafter	100%	100%	100%

3. PILOT payments for Additional Facilities (being improvements hereafter added to the Project Premises) shall equal one hundred (100%) percent of the Normal Tax due each Taxing Entity with respect to the Additional Facilities, were the Additional Facilities taxable, being the product of the Assessed Value of the Additional Facilities multiplied by the applicable tax rate or rates of each such Taxing Entity for such year.