

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

**MINUTES OF MEETING
May 5, 2009**

Present

Board Members: Richard Bedrosian
Michael Curry, Treasurer
Spencer Gulliver, Chairman
Jerry Maldonado
Sean O' Shea
John Penney, Secretary
Joshua Smith, Vice-Chairman

Lourdes Zapata, IDA Administrative Director
Thomas Whyatt, Esq., IDA Counsel

1. Roll Call taken by SG.
2. Proof of Notice. Accepted.
3. Request for Bills & Communications: LZ: none; MC: Bills from Live Work Learn Play ("LWLP") marked final I have since found sent certified w/receipt), Oxman Tulis Kirkpatrick Whyatt & Geiger ("Oxman, Tulis") April 15, Boyle March; letters sent by MC & LZ to Mr. Levy and LZ to MC re Tarshis (Savoy; e-mail from Comptroller re payments; LZ letters to Compuserve and Key Bank and New York State Authority Budget Office ("ABO") letter to Vice Chair; additional discussion to follow during Treasurer's Report.
4. Approval of March 30, 2009 Minutes: Corrections: spelling of Miss Andrews. MC: Regarding references to LWLP contract, there appears to be a June, 2007 motion by former IDA Board to accept LWLP, as well as possibly a 2008 motion. JS: Motion to Accept Minutes as amended; JM seconded. **Vote: Minutes unanimously approved, as amended.**
5. Treasurer's Report.
 - Bank Accounts: MC delivered Report incorporating statements since January. There are two bank accounts. Operating, and Savings. Savings Account has approximately \$6600. LZ to confirm exact amount. MC stated there are minor discrepancies in Operating Expenses that he has not been able to resolve and he is continuing to monitor the balances.
 - CompuServe \$9.95 monthly automatic withdrawal from sometime before 2002. When credit card was cancelled (sometime in 2002), CompuServe automatically transferred the withdrawals to the operating account with Key Bank. LZ has instructed vendor and Key Bank by letter and phone that this is not an authorized withdrawal and must be cancelled. LZ will request refund for approximately \$845 for past 6 years.
 - JM: what is status of investigation as to whether there exists an IDA resolution authorizing the December 2008 transfer of funds from IDA to City by Mr. McKenna? LZ: has not found any resolution specifically in IDA Minutes; discussed with City Manager, who suggests that since IDA and City Council were 'one and the same' that might have something to do with it. LZ to review 2008 City Council Minutes and continue research.
 - Tarshis, Catania \$2500 invoice re a number of bills pursuant to Savoy lawsuit. Bills were submitted to City of Newburgh instead of the IDA. MC requests details of the Settlement Agreement (and \$20,000 amount) before paying invoice. Is that part of Mr. Lamar's structured settlement? MC wants reassurance that lawsuit is final, there are no more expected bills. JM: Is this listed as final? LZ:

requested memo from Geoff Chanin on the Settlement Agreement and requested that Mr. LaMar's checks be payable to IDA, not City. She is waiting for response, and will also request letter from Tarshis stating case is finalized so we can close file.

- MC: Motion to Pay first 3 invoices (Ellison, Oxman, Tulis and Boyle): JS: Seconded. **Vote: Unanimously approved.**
- MC and Comptroller Emberger are in discussions re pro-rating bills. Percentage to pro-rated costs (such as phones) is in dispute and they are working toward an equitable solution. Is 33% reasonable? Pro-Rated List includes Xerox, Dell and ITC. Mr. Emberger says IDA is responsible for all of ITC bill currently (8 phone lines maintenance). JM: does this include all lines such as fax, phone, for all support staff on the floor? Audit Committee will meet to discuss and calculate and equitable portion.
- Cancel Chamber of Commerce Membership renewal discussion: JM: what are benefits? SG: does it support IDA mission? MC: we may meet people who are looking for projects and are ready to jump into projects in Newburgh? JS: who attends currently representing Newburgh? LZ: she has attended sporadically, not recently. MC: cancel, if we are not already suspended.
- Times Community subscription renewal: duplicates City's subscription. Used to confirm our notices. **VOTE: Unanimous Vote to cancel.**
- LWLP final bill and Urban Design Associates (UDA) invoices: LZ included the Minutes of April 23, 2007 with discussion of resolution to engage LWLP. But LZ unable to find resolution. Also in packet is resolution of July 2, 2008 to enter into UDA contract. LZ is still researching LWLP Contract. JM: where are the amounts noted? UDA Resolution states amount. Checks have been issued to LWLP and UDA. MC would like to see history of transactions, from motion through present, and schedule of deliverables along the way, to bills paid and to final bill. LZ: will ask LWLP and UDA to submit one consolidated final voucher which details amounts already paid.
- Personnel Expenditures: remaining on the list as a reminder that this will be a wider discussion with Mr. Emberger.
- Reimbursement to MC for paying tax bill for Murphy's Ditch in cash to avoid late penalty. **VOTE: approved to reimburse MC \$7.31. (MC abstained).**

ITEM 8A: East Parmenter St. Loan to Leyland Alliance

(As a courtesy to representatives for Leyland Alliance (John Palladino) and Habitat for Humanity (Dierdre Glenn and Board President Dan Clarino, board moved agenda forward to New Business. Chairman SG recused himself during these discussions and any votes taken).

LZ: Included in packets are: Memo re KNEC (Kingston-Newburgh Enterprise corporation); Resolution authorizing City to enter into agreement with Leyland Alliance for East Parmenter St. development, and Resolution by CC April 27, 2009 authorizing transfer \$300,000 from City to IDA for purpose of making Loan.

Background. DG: Habitat is in attendance to support Leyland's Loan Request. There will be 8 Habitat units and 16 market value Leyland units. Habitat and Leyland have a formal agreement.

Mr. Clarino: Part of the loan Leyland is requesting will go to pay for infrastructure and demolition. Infrastructure work has been completed. Demolition began on April 6 and was just completed today. We hope to begin foundation work in the beginning of June. Could not salvage the buildings due to necessary abatement. Mr. Palladino: Project is an important economic engine for the Liberty St. area and workforce housing. Intended for Policemen, Firemen, Nurses, and St. Luke's personnel.

JS: what was age of demolished buildings: DG: we found no evidence of buildings older than 1846.

Mr. Palladino: Leyland has also developed design guidelines for the Street. (Mr. Lou Marquette of Leyland joins discussion).

Mr. Whyatt: The IDA is being asked to administer a loan which was set up by the City Council and which the Council has now authorized IDA to continue. Project falls within overall development goals and IDA is appropriately supportive. However, I would want to see agreement with City to administer the loan. LZ: if IDA is prepared to move forward, three items are needed: a) Resolution by IDA to Accept Funds from KNEC; b) A Loan Agreement between City and Leyland, and c) Agreement between IDA and City to Administer the Loan.

Discussion of whether this expands the authority of IDA. Mr. Whyatt counsels that administering the loan does not expand its powers.

Explanation to Leyland that administering the loan will incur fees to IDA and IDA's counsel. Leyland acknowledged these loan expenses.

JM: Motion to accept "in principal" funds from City for purposes of those adopted in the City's Resolution #54-2009. JP: seconds. **VOTE: Unanimously approved.** Mr. Whyatt to draft the resolution.

Discussion of Loan Repayments: MC: concern that they be based on calendar year, not sale of units. LZ: interest paid monthly; principal paid monthly upon the sale of each unit. MC: Would like to see a repayment schedule, even conservative, to guarantee repayment of loan. Mr. Whyatt: loan is secured by property, like a mortgage. Discussion of structure of transactions. IDA would be primary lender, but secondary lien holders. LZ: will forward to Mr. Whyatt the original draft loan documents.

Ms. Glenn: City of Newburgh also to be reimbursed at unit sales for water bills and curb costs.

IDA agrees to schedule a special meeting if necessary to move project forward as soon as documents are prepared. Mr. Chanin to draft agreement between City Council and IDA.

(RETURN TO AGENDA ITEMS 6)

6. Reports of Committees.

• Treasurer's Report:

- Still Need QuickBooks Files Access. LZ waiting for IT department to get quotes, and Audit Committee will add to list of pro-rated items to discuss.
- Fee Schedules: review of New Rochelle's IDA fee schedule. Recommendation to adopt their schedule and revise as necessary. Mr. Whyatt: Applicants should be aware upfront of fees involved. MC: Motion to adopt the Fee Schedule of New Rochelle model as "reasonable fees". JP: Seconded. **VOTE: Unanimously approved.** SG: consider size of applicants to ensure fees are reasonable. New Rochelle's document takes this into consideration. Mr. Whyatt: fair notice to applicant allows some flexibility. LZ: will post to website as quickly as possible.
- Operating Account Balance: \$520,000 has been moved out of the account since the new board took office. MC: there is a serious need to address internal control policy. JM asks for accounting besides the \$388,000. SG: internal controls have been tightened up but need to be formalized. MC: every payment comes before the board, and this seems to be working. New board, new administrator and new attorney appear to have closed the gap.
- \$388,000: SG asks LZ what the position of City is currently. LZ: until 2008, IDA had been paying a portion of economic development salaries. In 2008, IDA incurred 100% and it was due and payable to repay the CDBG funds which had been used for salaries. MC pointed out that former IDA was not solely the City Council – there were non-council members sitting on IDA. JM: Questioned the legitimacy and appropriateness of these expenditures out of operating account. SG: good question for Special Meeting with ("ABO").
- Adoption of Budget: JM concerned that IDA is not able to make reasonable projections of expenditures, and the current agreement with City ends in June. Staffing agreement ends, and we need some kind of baseline to structure a budget. Let's start with worse-case scenario to find a baseline regarding properties we own, expenditures we know about and unexpected expenditures. JM: a process is needed to develop budget. MC: 2009 budget carries costs for 2007 & 2008 as well as current expenses and reiterates the need for QuickBooks and computer. JM We were under-budgeted because of information we were given.

• Governance Committee.

- JM: Edits to By-Laws have been given to Mr. Whyatt. We need Property Disposal Guidelines. Mr. Whyatt: presents Checklist for Board requirements, including website requirement, latest

financials, latest audit, mission statement. He recommends Directors and Officers Insurance Policy as well as current Indemnification policy. Discussions about obtaining insurance, Discussion of what is covered under City policies. Mr. Whyatt: suggests possibility of RFP for party to review current policies. LZ: need to get more clarification about what City has, and is speaking with Mr. Emberger.

- Need to appoint a CEO and CFO. Mr. Whyatt: these must be separate; none of the board members can hold these positions. CEO and Administrative Director can be the same. No need for three separate persons as long as the positions are being carried out.
- List of Deliverables. Staff policies, Code of Ethics, Indemnification Policy, Investment Guidelines, Property Disposal Guidelines, Financial Disclosures, Budget Report, Annual Report, Audit and Property Disposal Report. JM: discussion of Uniform Tax Exemption.
- Website: Minutes are up, but missing final drafts for Feb 17, Feb 24, March 4. Mission Statement is up. Moving to get other documents up as quickly as possible. LZ: to circulate current Newburgh Application and get feedback from board members then post to site.
- LDC and IDA By-Laws: SG will review LDC By-Laws to be provided by LZ. JM: Officially the LDC is composed of the CDA, the IDA and the Council. JP: this is an issue coming up at a work session in City Council. MC: make sure City Council is aware of the need to review their structure.
- JS: continuing to reach out to CUNY Graduate Center re salaries and kinds of people we could recruit. He will report when he has information from Valerie Ruttstein. JM: discusses how LDC can be structured and differing qualifications per structure.
- Public Notices of Subcommittee Meetings: IDA to ask ABO for requirements on this. Possibly a matter of 'good governance' rather than regulation.
- Discussion of whether IDA can serve only "at the pleasure of the City Council". Board must be independent from City Council; Members to ask ABO at Special Meeting. Mr. Whyatt recommends NYS ABO site to familiarize board with general documents, FAQ's, reports, and such.

7. Real Estate: The Foundry: Mr. Whyatt: draft of approval resolution for extension request. Foundry has asked for another month to get back to IDA in order to resolve some issues. JS: Motion to table discussion. JP: Seconded. **VOTE: Unanimous Move to Table until Next Meeting.**

- **IDA Property Lists and Maps.** LZ: Being updated again. Assessor's Office had originally included NCDA as well as IDA properties. Current list is IDA-owned. Getting full information on each, including actual agreements (such as PILOTS) to inform the board. JP: requests updated GIS map. MC: please check that water bills and assessor lists conform. JM: also include properties that IDA might have fallback agreement, reverters, where IDA does not appear in the title.
- **Crystal Lake:** LZ: IDA has no interest in the property. MC: requests clarification re HUD Audit on 108 Program which referenced a check from IDA to City and possible double payments. LZ: there was a grant from the federal Economic Development Agency, not the IDA.
- **Murphy's Ditch:** Mr. Whyatt: Mr. Korn submitted letter offering to pay 50% of the original easement agreement figure. Board has declined offer but is willing to discuss a payment plan that includes protection. Mr. Whyatt has invited them to next IDA meeting to propose their payment plan. MC: Does Mr. Korn represent the pad site only, or Kohls and PetSmart also? Discussion of tax map of easement and Newburgh Plaza LLC (formerly Lloyd's).
- **132 Broadway:** Mr. Whyatt cannot represent IDA in this lawsuit because one of his partners is representing M&T Bank. When matter is settled, IDA's position, with reverter rights and potential sale of undeveloped portion would pay off substantial amount of mortgage. IDA's needs to retain counsel as soon as possible. DB: shouldn't we authorize TW to find counsel for us? Discussion of necessity to be represented and possible choice of law firms. SG: can Search Committee commence search? TW: will return original legal documents to LZ. MC: Motion to seek special counsel on this matter. JM: Seconded. **VOTE: Unanimously Approved.**

- **Comparison with City-Owned Properties.** At suggestion of City Manager. Aligned with Ian McDougal (City Planner) memo regarding master development and possible IDA interests. JM: requests that IDA be placed on Work Session with City Council re IDA's. interest in Dupont Site, for example. Need for a broader understanding with City Council. LZ to draft letter to City Council to discuss memorandum of agreement and relationship in general between IDA and City and the next Work Session.
8. **New Business.**
- **IDA and ABO Compliance:** as discussed in Checklist above. To also be discussed at Special Meeting of May 6, 2009.
 - **Unison Cell Tower.** LZ preliminary discussion with representative who expressed interest in purchasing leases from IDA for the tower. Discussion of benefits to IDA. Land remains with IDA. Should IDA pursue Assignment of leases with T-Mobile and Nextel? Unison would need financials to analyze income and determine an offer price for assignment. In 2005 Crown Castle offered to purchase the leases for \$450,000. Board agrees that further analysis is warranted.
 - **Insurance RFP.** LZ to obtain full policies from Comptroller to forward to TW. LZ did not yet have time to prepare an RFP seeking Directors' Insurance. TW suggests obtaining quotes on costs. See earlier discussion under Governance.
9. **Unfinished Business.**
- **Accounting Services.** On hold until 2007 Audit is complete. Mark Levy to have draft of audit ready by end of week. Audit Committee to schedule with Mr. Levy.
 - **Transfer of Files.** No update from Stuart Glenn. Discussion of lack of responsiveness and failure to have timeline for cataloging files. JM: Motion to retrieve files as they are, within 5 business days and to pay final invoice. JP: Seconded. **VOTE: Unanimously approved.**
10. **Next Meeting Scheduled.** June 8, 7pm.
11. DB: Motion to Adjourn to Executive Session to discuss legal advice. JS: Seconded. **VOTE: Unanimously approved.**