

City of Newburgh
INDUSTRIAL DEVELOPMENT AGENCY
("IDA")
MINUTES OF MEETING
October 19, 2009

Present

Board Members: Michael Curry, Treasurer
Spencer Gulliver, Chairman
Jerry Maldonado
John Penney
Sean O' Shea
Joshua Smith, Vice-Chairman
Excused Absence: Richard Bedrosian
Of Counsel: Thomas Whyatt, Esq.
Administrative Director Courtney Kain

1. **Roll Call.** Taken.
2. **Proof of Notice of Meeting.** Accepted
3. **Request for Bills and Communications.**

Receipt of a Certificate of insurance from Mount St. Mary naming IDA as an additional insured. Mr. Curry will investigate the purpose of this Certificate of Insurance.

City Manager Herbek forwarded a letter from the State ABO to the IDA regarding continued reporting failures for 2007 and 2008 fiscal years, and the IDA's loss of exemption status. Mr. Whyatt recommended that Ms. Kain draft a response to the ABO so that the lines of communication are addressed to the correct IDA personnel in order to receive timely notices.

4. **Approval of Minutes of September 21 Meeting.**

Mr. Penney: Motion to approve.
Mr. Maldonado: Motion seconded.
VOTE: Unanimously adopted.

5. **Reports on Committees.**

Treasurer's Report. Mr. Curry reported that the Key Bank account will be switched to a business account with internet access. The Bank of America account still needs to be closed and rolled into the Key Bank account. Mr. Curry recommended paying the School Tax Bill (\$2,881); Oxman Tulis (\$11,605), Ms. Boyle (\$125) and water bills (\$26.05).

Mr. Penney: Motion to pay.
Mr. Smith: Motion seconded.
VOTE: Unanimously approved.

Governance: Mr. Maldonado reported that the Property Disposition Guidelines still need to be adopted and the draft Revised By-Laws need to be finalized. Mr. Whyatt and Mr. Maldonado will review all of the governance documents and finalize them before the next meeting. Ms. Kain will include this information in her letter to the ABO recapping the IDA's communications with them.

Audit: Mr. Curry requested that information be gathered on whether an Internal Control Policy needs to be adopted. Mr. Whyatt will review the state requirements and concurred that having such a policy would be helpful.

Two proposals were received from auditing firms for the 2008, 2009 years: O'Connor, Davies, Munns & Dobbins LLP, and Sedore & Company ("Sedore"). The O'Connor Davies proposal was @\$16000 for 2008 and slightly higher for 2009. Sedore was \$8700 for 2008 and \$9250 for 2009. O'Connor Davies has already been hired by the City of Newburgh for the 2008, 2009, 2010 audits.

The Audit Committee recommends that the Board hire Sedore for audits for the 2008, 2009.

Mr. Curry: Motion to engage Sedore & Company for audits for 2008 and 2009

Mr. O'Shea: Motion Seconded.

VOTE: Unanimously approved.

Ms. Kain will send acknowledgment letters to each firm. Sedore has requested a meeting with the Audit Committee to prepare a list of documents that will be required, including past audits of the City. The required audit for the EDA grant was not included in the contract with Sedore. EDA grant audits are required every three years; the last was in 2005. The Committee will ask Sedore what the cost would be.

Mr. Smith reminded the Board that it voted at the last meeting for a forensic audit, if financially feasible. An inquiry will be made as to Sedore's expertise in forensic audits and the fee. Mr. Whyatt asked if Sedore is familiar with PARIS audits and whether their audit format could fit into the PARIS format in order to save data entry time. Mr. Curry will inquire.

7. Old Business

- Verizon Building Status – Mr. Maldonado reported that he spoke with Mr. Knickerbocker, the former property manager for Verizon's northeast properties. The building is still available. Ms. Joanne DiBono is now responsible for property management. Verizon has a preference for selling, not conveying it, as they had originally offered the City several years ago. Verizon offered to give an on-site tour for the Boards. Ms. Kain will schedule a site visit.
- Murphy's Ditch Easement: Friday, October 16 Ms. Kain, Messrs. Smith, Curry and Whyatt met with Mr. Korn and his attorney and reviewed the history of the property. Ms. Kain distributed an Oct. 19 proposal from Mr. Korn's attorneys to pay the IDA \$35,000 now and then \$40,000 upon leasing each of the 3 pods. Mr. Whyatt recommends a lien that would be enforceable against the pads, in the event that someone else wants to develop them.

The Board discussed an acceptable plan. Mr. Whyatt suggested, and the Board agreed, that a timetable could be met by imposing installment payments for the balance, accruing interest, which could be worked into a security agreement. The Board favored a 5-year installment plan and a reasonable interest rate in the 5% area. Mr. Whyatt will convey their suggestion to Mr. Korn's attorney, who will be invited to come to the November meeting with a detailed proposal.

- Private Activity Bond Act. The deadline for providing the state with any projects or bonded projects was October 1. Ms. Kain said it is not typical that an IDA has a project every year that they want to do so and they generally pool the annual amount. This year Westchester gets one, then Ulster, then the City of Newburgh the following year. We each have our own allocation and Ms. Kain said \$423,000 isn't a lot to bond. She sent a letter prior to the deadline, indicating the Board's interest in the program and potential projects that would qualify. Ms Kain suggests reaching out again to re-engage and determining a path for 2010. She will call, find out who the 2009 recipient is and discuss process. Mr. Wyatt spoke with Westchester IDA Bond Counsel, who advised looking for a private placement bondholder. This is a federal tax exempt bond. Next year the state agency will be able to give tax relief.
- Crown Castle: The Treasurer is waiting for the reconciliation report that Mr. MacCallum said at the September meeting he would send. Otherwise, this item is concluded.
- 1 Corwin Court: The City Manager requested in writing that the IDA request 1 Corwin Court to pay its PILOT in full. They did not pay for 2008. Mr. Whyatt stated that since the pilot ends in 2010, there is no room for negotiation. Board needs to recalculate the formula for the PILOT to confirm 2008 and 2009 payments. Mr. Curry requests that a task force committee be called to dissect the entire PILOT transaction so that the Board can understand how a straight lease PILOT agreement is structured. This would include sitting with the assessor and the finance department and also contacting former IDA counsel Stuart Glenn.
- EDA Award Update: Ms. Kain reported that there are two outstanding requirements; Engineering Reports and the Development Agreement. Craig Marti is completing the engineering reports and appropriate letters should be sent to the EDA this week. Ms. Kain stated that the IDA is not required to prepare and post the audit she initially thought was necessary because the IDA has neither received nor disbursed more than \$500,000 in federal monies.

A Development Agreement is required for the whole parcel. Ms. Kain submitted a request to expand the zoning, which has been preliminarily approved by the EDA. The original parcel was zoned "Med Tech" which was restrictive. Ms. Kain consulted with the City Planner before requesting to expand the zoning to light industrial, which will support jobs and economic development. The City, the IDA and the Developer must sign an amendment to the original 2004 agreement which specifically recognizes that this is EDA funding, and that site must be developed under purposes agreed for by that project.

Mr. Whyatt distributed a draft "Amendment to Master Sales Lease Agreement" which amends the most recent amended agreement utilizing EDA's preferred terminology. The former conveyance is now subject to the additional terms which Mr. Whyatt explained in detail. The IDA can then file a 'correction deed'. Ms. Kain was asked to send this draft to the EDA and Northeast for final form prior to City and IDA signing. Mr. Whyatt requested that The City Planner read through the Amendment and verify facts. The consensus of the Board was that the project be moved forward as explained by Mr. Whyatt.

- IDA Computer Purchase. The suggestion was made to get a dual boot – Windows 7 and XP and avoid Vista altogether. The City is trying to identify office space in city hall

with staff support. There was a brief discussion of how to allocate staff and bookkeeping time, which discussion will be held over until issues are resolved.

- IDA Property list. Mr. Whyatt: reported that it will cost \$1500-1800 for a title company to go through records in Goshen and make copies of all deeds, mortgages, easements or other records of IDA, NIDA, and other permutations of the IDA, as well as all deeds issued from the IDA in last 5 years. Consensus of the Board was that this would be a worthwhile expense.

Mr. Penney: Motion to hire Morasco Agency for a fee of up to \$1800 to produce title records from Goshen.

Mr. Smith Motion Seconded.

VOTE: Unanimously approved

- NYSERDA Grant and the Hudson Valley Initiative. Mr. Smith gave an update on the IDA's Letter of support on behalf of HVI.
- West Street Parcel Boundaries and the DEC voluntary compliance agreement. Mr. Whyatt is preparing a consolidation deed in which the IDA would own the whole parcel. Mr. McDougall will review its details with Mr. Whyatt before it is forwarded to the Board.
- Brownsfield Sites. Mr. Maldonado asked whether a BOA application had been made regarding the DuPont site. Ms. Kain said an application by a not-for-profit entity is pending. She said there were conversations in March of 2008 about discussions with City and IDA and BOA. Mr. Maldonado asked when that application will be approved or rejected. The City of Newburgh issued a letter of non-support of the application by the not-for-profit. The Board discussed whether it should also submit a non-support letter.

Mr. Maldonado encouraged the IDA Board to express an interest in the property. Mr. Smith reminded the Board that the IDA and City had discussed speaking directly to Dupont, and it would be timely to follow through. Mr. McDougall stated the key issue is to find out the status of the existing BOA. Next the IDA should apply for BOA and should speak to other parties quickly. Mr. Maldonado recommended that Mr. McDougall and Ms. Kain initiate those contacts and submit a separate application. It was pointed out that the current application by the non-approved not-for-profit entity includes properties owned by the IDA, but the IDA was never notified. Mr. McDougall also noted that although municipalities commonly do land use studies, it is a conflict of interest for the not-for-profit to conduct a study on property it wishes to purchase using government funding.

The Board consensus is to submit an application, and to notify the state with the IDA's letter of interest as soon as possible. The IDA's concerns echo the concerns of the City, as two of the biggest landholders in that area. Marge Bell and Nick Valentine would be council members who could be part of a working group. Spencer Gulliver and Jerry Maldonado would represent the IDA.

8. New Business

- 2010 Budget. Mr. Curry still needs some expense information. The purported taxes on the cell tower will take up almost half of the income from the leases. The consensus is that the Board should file a tax grievance. Mr. Curry indicated there are still many question marks on the budget. Ms. Kain asked whether a formal

request for an extension is necessary. Mr. Curry indicated that although the board might be on schedule to pass the budget by November 1, practically speaking, it will be late. Ms. Kain should reference the 2010 Budget in her letter for the ABO.

- Guest Presentation. Ms. Virginia Lewis was introduced to the Board to propose a skating rink for the children. Ms. Lewis requested a 2-year tax grant for her program so that she could organize and develop the project. Ms. Lewis has spoken with Chris White from Congressman Hinchey's office. Chairman Gulliver applauded her idea and explained that the IDA is not the appropriate agency for this project. Ms. Kain suggested visiting the GET program which Ms. Lewis has already done. Ms. Kain suggested that Ms. Lewis make an appointment with her to further discuss her business plan with the City.

Mr. Maldonado noted that he will be attending the National Brownsfield Conference in Louisiana in November. There was a discussion of the possibility of Mr. McDougall going as well, but the City has frozen travel.

9. The Next Monthly Meeting is November 16.

10. Adjourn to Executive Session to Discuss Litigation.

Mr. Smith: Motion to Adjourn to Executive Session.

Mr. Curry: Motion Seconded.

VOTE: Unanimous Vote to Adjourn to Executive Session.