

CITY OF NEWBURGH  
**INDUSTRIAL DEVELOPMENT AGENCY**

83 Broadway, Newburgh, NY 12550

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**Board Members**

Joshua Smith, Chair  
Richard Bedrosian, Vice Chair  
Michael Curry, Treasurer  
John Penney, Secretary  
Jerry Maldonado  
Sean O'Shea

**Executive Director**

Theresa G. Waivada

**Staff**

Craig Skelly,  
Chief Financial Officer  
C.K. Boyle,  
Recording Secretary

**Counsel**

Thomas Whyatt, Esq

**AGENDA**

**MONDAY, MARCH 19, 2012**

**7:00P.M.**

**Location: Council Chambers**

1. Roll Call
2. Proof of Notice of Meeting
3. Approval of February 9<sup>th</sup> Minutes
4. Request for Bills and Communications & Treasurer's Report
5. Report from the Chair – Joshua Smith
6. Report from Chief Executive Officer – Theresa Waivada
7. Report from Counsel – Thomas Whyatt
8. Reports of Committees
  - Audit – Michael Curry, Chair
    - 2010 Audit – Motion to approve, Voice vote
    - 2011 Audit - Status
  - Governance – Joshua Smith
9. Old Business
  - Pierces Road and NCAC
  - BOA Phase 3 Application Status – Ian MacDougall
  - EPA Barrel Cache Update
  - Cell Tower property transfer request to City of Newburgh
10. New Business
  - Approval of 2010 and 2011 Annual Reports to the Authority Budget Office
  - Approval of 2012 Mission Statement
11. Adjournment

**Discussion for additional March and April meeting dates.**

**CITY OF NEWBURGH  
INDUSTRIAL DEVELOPMENT AGENCY ("IDA")  
MINUTES OF MEETING  
February 9, 2012**

**Present**

Board Members: Joshua Smith, Chair  
Richard Bedrosian, Vice Chair  
John Penney  
Sean O'Shea

Absent: Michael Curry  
Jerry Maldonado

Counsel: Thomas Whyatt, Esq.  
In Attendance: Craig Skelly, Chief Financial Officer  
Ian MacDougall, City Planner  
Jim McIver, CT Male  
Times Herald Record, Jessica DiNapoli  
Theresa Waivada, CEO

**Roll Call** Mr. Smith called the meeting to order at 7:15pm. A quorum was present.

1. **Proof of Notice of Meeting.** Accepted.

2. **Approval of Minutes of January 17 Monthly Meeting**

Mr. Penney: Motion to Approve the January 17 Minutes.  
Mr. O'Shea: Motion Seconded  
**Vote: Unanimously approved.**

3. **Bills, Communications and Treasurer's Report** Mr. Skelly reported the balance as of February 9, 2012 is \$835,898.54. He presented six invoices to be paid. Payment to the City of Newburgh is adjusted for the 3<sup>rd</sup> and 4<sup>th</sup> quarters.

Mr. Penney: Motion to approve payment of six invoices as presented.  
Mr. O'Shea: Motion Seconded.  
**VOTE: Unanimously approved.**

Mr. Skelly reported that the 2010 Audit is near completion with one open item remaining. Sedore Co. records will be available to BST for 2011 Audit information. As soon as the 2010 Audit is final, the Executive Director will submit it to the ABO and BST will begin the 2011 Audit.

4. **Report from the Chair** Mr. Smith and Ms. Boyle attended the ECD compliance meeting in Albany on January 18 and 19<sup>th</sup>. The ABO presentation emphasized filing reports by March 31. The ECD Conference Manual is available in the IDA office for review. One presentation was on a PILOT "District" in Yonkers, as an alternative way to do development.

5. **Report from Executive Director**

- Participated in a cell tower webinar. Cell towers may become obsolete as existing structures such as water towers can support the antennas.
- Considerable time spent on preparing two audits.
- PARIS will go faster as we become more facile at entering data. Next week will be focused entirely on that project.
- GEMMA. All correspondence to Mr. Carchietta has been returned "undeliverable". The Project is still in default for three missing payments, but if the Trustees and Bondholders are willing to forego them, it is not the IDA's responsibility to do the work of the Trustees. Mr. Penney asked about corrective action on the elevator code violation and insurance coverage. The IDA has not received a Certificate of Insurance indemnifying the IDA. Ms. Waivada will discuss the situation with the ABO.
- City Council Work Session tabled proposed contracts between the City and the CDBG until April 1. It will be up to Ian to explain the contract. The Council doesn't understand the CDBG component. Ms. Waivada said it takes time for cooperation to grow. She offered assistance to the Council to fill the Board vacancy and sent information on qualifications for the position to the Council. Economic Development needs to be centralized.

## 6. Reports of Committees

**Audit Committee:** There was no audit committee meeting.

**Governance Committee:** Mr. Smith reported that the Governance Committee met before the Board meeting and recommends adopting the draft By-Laws as presented.

Mr. Bedrosian: Motion to approve the By-Laws.

Mr. Penney: Motion Seconded.

Discussion: Ms. Waivada noted changes in descriptions of duties and responsibilities of the Executive Director, officers and staff. At Mr. O'Shea's question, a discussion followed on the relationship of the IDA and the LDC.

**VOTE:** Unanimously Adopted.

## 7. Old Business.

### **BOA Grant/Scobie Drive/NCAC Update – Report from City Planner.**

Mr. McDougall reported that there has been no change to the BOA Status since the January meeting. NNOA will have another meeting with their advisory committee in two 2 weeks. He reiterated the importance of a joint application by the IDA, City and NCAC or the Implementation Funds Application, which is the next phase and due by the end of March. Ms. Waivada drafted a letter which was approved by the Board to coordinate a meeting. Mr. McIver said the Board should consider what can be accomplished with implementation funds, such as investigation of the Property, Marketing purposes such as signage, road widening, streetscape improvements.

**SCOBIE DRIVE Access Agreement:** The Access Agreement is ready for the Chair's signature.

Mr. Whyatt repeated his explanations given in the November and December Minutes as to the purpose of the drum cache clean-up, staging and storing. It will be signed by Dupont within a week or so. Dupont has for 1-yr stay to start; construction might start in August 2012 according to McIver in the dry season.

**1 Corwin Court:** Mr. Whyatt presented Resolution No 2012-2-9-1 and he summarized the PILOT payment situation. Annual payments have not been made to the extent to \$275,000.00, which was due December 31, 2011 per a Forbearance Agreement. This Resolution authorizes Oxman Tulis

to commence litigation, and the Board Chair to sign pertinent documents. This discussion is public rather than in Executive Session because Corwin's attorneys are aware of the Board's intentions.

Mr. Penney: Motion to approve Resolution No. 2012-2-9-1  
Mr. Bedrosian: Motion Seconded.  
**VOTE: UNANIMOUSLY PASSED.**

8. **EXECUTIVE SESSION.** Mr. Whyatt recommended entering into two executive sessions; the first to discuss the possible sale of property; the second to discuss possible litigation of The Foundry.

Mr. Bedrosian: Motion to adjourn to Executive Session as recommended by Counsel.  
Mr. Penney: Motion seconded.  
**VOTE: Unanimously approved.**

Mr. Smith adjourned the public portion of the meeting at 8:15pm.

The Executive Session was adjourned on a motion made by Mr. Penney and seconded by Mr. O'Shea and so moved. The Board resumed the public portion of the meeting. The Chair asked for any business.

Mr. Penney : Motion to authorize Agency Counsel to pursue property conveyance as discussed in Executive Session.  
Mr. Curry: Motion seconded.  
**VOTE: Unanimously passed.**

Mr. O'Shea: Motion to approve Resolution No. 2012-2-9-2, authorizing Agency Council to proceed with two separate pieces of litigation involving The Foundry as discussed in Executive Session.  
Mr. Penney: Motion seconded.  
**VOTE: Unanimously passed.**

Mr. Bedrosian moved to adjourn the meeting; it was seconded by Mr. Curry and was unanimously passed.

The meeting was adjourned at 9:50 pm.

The next monthly meeting of the IDA Board is scheduled for March 19, 2012.

**CITY OF NEWBURGH  
INDUSTRIAL DEVELOPMENT AGENCY**

**RESOLUTION NO. 2012-February 9-1**

**Authorizing commencement of legal action to enforce PILOT  
terms of a Lease and Forbearance Agreement between the City  
of Newburgh IDA as Lessor and Corwin Management LLC as  
Lessee**

**WHEREAS:**

The City of Newburgh Industrial Development Agency (AIDA@) entered into a lease agreement dated April 27, 2001 (ALease@) with Corwin Management LLC, a New York Limited Liability Company with offices at 5 Krolla Drive, Monroe, New York 10950 (ALessee@);

The Lease remains in force and requires Lessee to make annual PILOT payments to the City of Newburgh pursuant to a schedule set forth in the Lease;

Lessee has stopped making the required payments;

The IDA gave Lessee Notice of Failure to Pay Additional Rent and Impositions, dated April 1, 2011, stating that the amount due totaled \$275,599.38;

The IDA and Lessee entered into a Forbearance Agreement dated September 15, 2011 providing that Lessee would pay to the City of Newburgh the full amount due on or before December 31, 2011;

Lessee has failed to make the payment required under the Lease or Forbearance Agreement.

The Lease and Forbearance Agreement provide that in the event the IDA incurs costs including legal fees in enforcing the Lease and Forbearance Agreement, Lessee is obligated to reimburse same;

**NOW THEREFORE BE IT RESOLVED:**

The IDA hereby authorizes and directs its counsel, Oxman Tulis Kirkpatrick Whyatt & Geiger LLP, to file and serve Summons and Complaint and motion papers, make appearances and take all other steps as are required to commence and prosecute legal action in this matter for

the purpose of collecting all funds due, the costs and legal fees incurred in the action, and such other remedies as may be had.

The Chairman is authorized to execute such documents and make such appearances as are required for prosecution of the action.

Dated: February 9, 2012

The above is hereby certified to be an accurate copy of Resolution No. 2012-February 9-1, duly adopted by the City of Newburgh Industrial Development Agency at its regularly scheduled meeting held February 9, 2012

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John Penney, Secretary

**CITY OF NEWBURGH  
INDUSTRIAL DEVELOPMENT AGENCY**

RESOLUTION NO. 2012-February 9-2

**Authorizing commencement of legal actions to enforce  
Reverter Rights as to certain condominium units on  
Washington Street in the City of Newburgh, known as the  
Phase III Units, owned by the Foundry Development Group,  
LLC, and to seek Leave to Intervene on Behalf of the  
Defendant in an Action of Foreclosure brought by City  
National Bank against Foundry Development Group, LLC**

**WHEREAS:**

By deed dated October 1, 1998, the City of Newburgh Industrial Development Company (AIDA@) conveyed certain unimproved condominium units, referred to as Phase III (the APhase III Units@), located on Washington Street in the City of Newburgh, to a development corporation known as Polonia Service Co., Inc. (APolonia@) for development in accordance with IDA=s purposes;

Said deed stipulated that various steps in development of the Phase III properties must be completed by Polonia upon a schedule of completion dates set forth in the deed;

Said deed specifically stipulated that Certificates of Occupancy for the properties would be secured by Polonia by a certain date (AC of O completion date@);

Said deed further provided a mechanism for reversion to IDA of title to the Phase III properties upon certain defaults by Polonia, including failure to obtain Certificates of Occupancy by the C of O completion date;

By deed dated January 29, 1999, the Phase III properties were subsequently conveyed to the Foundry Development Co., Inc. (hereinafter, AFDC@), which subsequently entered into development agreements with others;

As successor in title to Polonia, FDC is subject to the requirement that Certificates of Occupancy for the Phase III properties be secured by the C of O completion date;

By resolution dated July 26, 2007, IDA approved a Financing Agreement between IDA and Imperial Capital Bank in connection with a loan (the ALoan@) to be made by Imperial Capital Bank to Foundry Development Group, LLC (hereinafter AFDG@), under which IDA

agreed, inter alia, to extend the C of O completion date to September 30, 2009;

By deed dated August 14, 2007, FDC conveyed the Phase III properties to FDG;

By resolution dated June 8, 2009, upon the request of FDG, the IDA further extended the C of O completion date to September 30, 2011 and agreed to amendment of the Financing Agreement reflecting this extension;

On October 14, 2009 City National Bank, successor to Imperial Capital Bank as to the Loan, commenced a foreclosure action in Orange County Supreme Court against FDG;

The C of O Completion Date of September 30, 2011 has expired and has not been extended by the IDA, thus giving the IDA right to exercise its reverter rights and take back title to the Phase III Units;

City National Bank and FDG have not settled the foreclosure claim but report that they continue to negotiate a settlement;

IDA wishes to protect its interests in the Phase III Units and to assure that any settlement between National City Bank and FDG will best protect the property interests of the IDA and best promote the IDA=s goals to stimulate development in the City of Newburgh in order to create new jobs, expand the tax base and redevelop certain areas of the City of Newburgh in accordance with IDA=s purposes;

**NOW THEREFORE BE IT RESOLVED:**

The IDA hereby authorizes and directs its counsel, Oxman Tulis Kirkpatrick Whyatt & Geiger LLP, to file and serve the papers necessary, including the Summons and Complaint and motion papers, to make appearances and take all other steps as are required to commence and prosecute legal action seeking to exercise the IDA=s rights of reverter as to the Phase III Units; and to file and serve the papers necessary, including the Motion for Leave to Intervene and motion papers, to make appearances and take all other steps as are required to intervene in on behalf of Defendant FDG in the foreclosure action brought by City National Bank.

The Chairman is authorized to execute such documents and make such appearances as are required for prosecution of these actions.

Dated: February 9, 2012

The above is hereby certified to be an accurate copy of Resolution No. 2012-February 9- 2, duly adopted by the City of Newburgh Industrial Development Agency at its regularly scheduled meeting held February 9, 2012

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John Penney, Secretary

## DRAFT MEMORANDUM

To: City of Newburgh City Council  
FROM: Joshua Smith  
Re: The "Cell Tower" Parcel  
Date: March 12, 2012

At its meeting of March 19, 2012, the City of Newburgh IDA adopted the attached Resolution authorizing me to request and accept from the City of Newburgh a return of title to a two-acre parcel of land on Ellis Avenue sometimes referred to as the "Cell Tower Parcel," where a number of commercial cellular communications maintain their local antennas.

As will be discussed below, the purpose of this conveyance is to correct an apparent mistake made in 1998, which has cost the City a significant loss in taxes, and to enable the IDA to continue and expand the property's use for cellular communications purposes.

The City maintains its own emergency communications equipment on the Cell Tower, rent-free. This rent-free use would, of course continue under IDA ownership.

The two-acre parcel is part of a 42.4-acre lot that was acquired by the City of Newburgh IDA from a developer in 1983. In 1996 the IDA subdivided the parcel into two lots: a small, 2-acre lot intended for use as a Cell Tower site, and a large, 40.4-acre parcel that was apparently intended to remain undeveloped. Attached is a tax map showing the two lots.

In February of 1998, title to both lots was transferred from the IDA to the City of Newburgh by means of a tax foreclosure proceeding. Inasmuch as property owned by the IDA is not taxable, this form of transfer appears to be improper. It was possibly intended to rectify an earlier error, however. The City and the IDA had already, mistakenly, entered into a lease agreement (with the City as Landlord and the IDA as Tenant) dated December 31, 1997 – many months before the City even owned the property. The purpose of the lease was to make the property available for development as a cellular communications site. One of the conditions of the lease is that the tower would be made available rent-free to the City for use by its emergency services. The lease also includes access to the Cell Tower lot across the City's 40.4 acre lot.

The arrangement between the parties did not include any provisions for property tax or Payments in Lieu of Taxes (PILOT), however – a costly mistake that the IDA, as the owner, will be in the position to rectify in its new lease arrangements.

In February of 1999 the IDA subleased a portion of its lot, with a right of access across the City's lot, to Orange County - Poughkeepsie MSA Limited Partnership, which later assigned the lease to Crown Castle. Crown Castle subsequently subleased use of the tower to other carriers. Again, none of these arrangements included payment of property taxes or PILOTs.

Crown Castle has now asked the IDA to extend the lease so as to provide a 25-year commitment, which can permit Crown Castle to extend the term of other cellular communications companies and to bring new companies to the property. This opens up the possibility of PILOT payments being required in future leases. The IDA asks the City to return title to the Cell Tower parcel so that the IDA can establish PILOTs in any new leases and subleases.

I thank you for your consideration of this matter.

RESOLUTION NO. 2012-3-19-1

OF

March 19, 2012

A RESOLUTION AUTHORIZING THE CHAIRMAN TO REQUEST AND  
ACCEPT FROM THE CITY OF NEWBURGH A DEED OF CONVEYANCE  
TO THE CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY  
OF PROPERTY OWNED BY THE CITY OF NEWBURGH AND  
LOCATED IN THE CITY OF NEWBURGH

WHEREAS, the City of Newburgh is the owner in fee simple of a two-acre parcel of real property located in the State of New York, County of Orange and City of Newburgh, known as Lot 50-1-5.1 on the City of Newburgh Tax Rolls, also being Lot No. 1 as shown on a map entitled "City of Newburgh Industrial Development Agency Final Plan Minor Subdivision," said map having been filed in the Orange County Clerk's Office on September 27, 1996 as Map No. 201-96; and an adjoining 40.4 acre parcel of real property located in the State of New York, County of Orange and City of Newburgh, known as Lot 50-1-5.2 on the City of Newburgh Tax Rolls, also being Lot No. 2 as shown on a said Map No. 201-96;

WHEREAS, Lot 50-1-5.1 (the "Lot"), along with a right of access crossing Lot 50-1-5.2 (the "Access Right"), is currently leased to the City of Newburgh Industrial Development Agency (NIDA) by lease dated December 31, 1997, with an initial term ending December 31, 2027;

WHEREAS, the NIDA has subleased the Lot, along with the Access Right, to predecessors of the current subtenant, Crown Atlantic Company, LLC ("Crown Atlantic"), by lease dated September 10, 1999, and terminating September 9, 2024, pursuant to the terms of which lease Crown Atlantic has constructed a tower and an equipment shelter for use as a wireless telecommunications facility for itself, additional subtenants and the City of Newburgh;

WHEREAS, the said lease to the NIDA and sublease to Crown Atlantic both contain a provision requiring that the City of Newburgh be allocated, at no charge to the City, tower space for use for its own wireless telecommunications purposes;

WHEREAS, Crown Atlantic has asked that its sublease be extended so as to permit long-range planning and further development of the lot for telecommunications purposes;

WHEREAS, the NIDA has requested that the City of Newburgh transfer title to the Lot and the Access Right, so as to enable the NIDA, as owner, to establish as elements of a lease

extension a PILOT program and other benefits to the City and the tenant, consistent with the NIDA's industrial development purposes;

WHEREAS, pursuant to Article XVI, Section 16:04 of the City of Newburgh Charter, the City may transfer, without public auction, real property held by the City for a municipal purpose, where in the opinion of the City Council it is no longer needed for municipal purpose, to the City of Newburgh Industrial Development Agency for the purpose of Industrial Development;

WHEREAS, the Lot and Access Right are no longer needed for a municipal purpose so long as the City preserves its current right of allocation of tower space to the City, at no charge to the City, for use for its own wireless telecommunications purposes; and

WHEREAS, the City of Newburgh wishes to transfer ownership of the said Lot and Access Right to the City of Newburgh Industrial Development for industrial development purposes subject to the City's continuing right of allocation of tower space as such right exists now;

WHEREAS, The City of Newburgh Industrial Development Agency wishes to accept such transfer subject to the City's continuing right of allocation of tower space as such right exists now;

NOW THEREFORE BE IT RESOLVED, by the Members of the City of Newburgh Industrial Development Agency, that the Chairman be and is hereby authorized to request and to accept transfer of the Lot, and an easement of access to the Access, from the City of Newburgh, by deed substantially the form annexed hereto, including reservation of the right of allocation to tower space as discussed herein, and to execute such documents as may be appropriate and required by the Agency's Counsel for this purpose.

The question of the adoption of the foregoing resolution was duly put to vote on roll call, which resulted as follows:

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

The resolution was thereupon duly adopted March 19, 2012.