

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

SPECIAL MEETING MINUTES

May 6, 2009

Present

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

IDA Administrative Director: Lourdes Zapata

New York State Authority Budget Office ("ABO")
David Kidera, Director
Mike Farrar, Deputy Director for Compliance
Susan Delehanty, Senior Policy Analyst

1. Roll Call taken by SG.
2. Proof of Notice. Accepted.
3. Discussion with New York State Authority Budget Office.

Mr. Kidera gave the background history of the New York State Authority Budget Office ("ABO") and outlined its responsibilities. ABO has no specific enforcement authority, such as fines or removal of members. Purpose of presence at this meeting is to explain what ABO expects from the IDA, what needs to be filed in order to come into compliance. ABO is separate from State Comptroller but they do coordinate. He noted that any Procurement Contracts over \$5,000 must be reported to ABO. Public Authorities Reporting Information System ("PARIS"): electronic reporting system was instituted a few years ago. <http://www.abo.state.ny.us/paris/paris.html>

See <http://www.abo.state.ny.us/recommendedpractices/practices.html> for models for Code of Ethics, Governance, Audit and Internal Controls

SG: The Board is seeking recommendations from the ABO that could be published.

Mr. Farrar explained details of an on-site compliance review: ABO identifies the public authority and notifies it of ABO's intention to review. At the same time it submits a list of documents and records that it requires be available (e.g., Does the IDA have the required policies?). IDA must have all required documents available for review. ABO looks at whether all of the required policies are reasonable, how the authority selects its project applicants, how it structures tax benefits or relief. At the conclusion of the review during an Exit Conference, ABO will discuss with the IDA its findings and recommendations, and will issue a Draft Report. ABO looks for a written response formally acknowledging the report and agreeing with the recommended actions. The Final Report is then issued.

JM: Asks for more specifics on how broad the inquiry would be. Mr. Farrar explained that besides verifying required policies and documents, ABO will do an in-depth review of 2 or 3 IDA projects. Mr. Kidera: to see what these reviews look like, go to our website, www.abo.state.ny.us. ABO's reviews are evolving and look more carefully at how efficient and how effective IDA's are. However, ABO does not become involved with your management decision processes.

SG: This is a new IDA Board with a new Administrator, and we're researching what the history has been. Not all of the projects are what we anticipated the IDA's mission to be; projects crept into our jurisdiction through the City. How does ABO look at that type of project that doesn't necessarily fall within IDA but might have a secondary interest in helping a commercial entity down the road?

MC: For example, what if the agency has provided properties for single-family home development for work-force and low-income housing.

Mr. Farrar: You're involved in projects now that would fall outside of the policies? That's what we would say – "You don't have the authority to do that". That would be cited in the Review.

Mr. Kidera: But there is an IDA project component within PARIS reporting. And we expect that all projects, suspect or not suspect, would be recorded in PARIS. Who the Applicants were, what benefits they received, the purpose of the project, current status, outstanding debt. We wouldn't necessarily question the legality of them, per se through PARIS, but in a Review we would say that while you are funding this project it might not have been appropriate.

JM: In order to comply, we need complete reports, but what if we submit incomplete reports because we don't even know all the projects IDA has had any interest in?

JS: For Instance, we have been receiving list of properties probably since September. The lists are never the same. Since December they appear to be getting more consistent, but nevertheless, under the circumstances it's difficult for us to establish a bottom line. Can you assist us in finding a bottom line?

MC: To be clear, this is only on the properties we hold title to. We haven't even attempted to address the list of properties we might have reverter clauses on, or other interests in.

SG: What we would hope to see from the ABO is a list of recommendations that we can publicize that clearly state practices that our agency would be able to use and follow in order to get us back into the proper place. The fact that we could publish that and use to recommend to the City in helping us organize our paperwork would really be a substantial benefit to us.

MC: We're operating under By-Laws that were created 27 years ago. MC gives general history of predecessors and current circumstances. Former administrator advised current board not to take officers until the by-laws were revised. Board chose to move forward with electing officers (Jan. 5, 2009) and is in the process of reviewing by-laws at this time.

JM: Explains that events and transactions occurred after the current board was seated but which transpired without their knowledge (transfer of funds, for example). History of Board and City Council overlap created a loose and somewhat 'dysfunctional' operating structure. Other public authority Local Development Corporation ("LDC") is a similar example and is not currently in compliance with guidelines.

JS: IDA is 7/12 of the Board of the LDC.

JP: There are no internal conflicts in the IDA, and I want to make that point.

Mr. Kidera: We're not authorized to issue opinions, and you have counsel. Regarding the Baseline: are you confident that you know all the properties to which you have title?

JS: Our director is trying, but some of this has to do with the adequacy of City records. JS gives example of Broadway site. Explains chain of events from Architectural Review Commission meetings to demolished buildings, some of which IDA was still collecting rents, to failure of the developer to win Orange County Community College (as far as we know, the IDA did not negotiate with the College, just the City Manager). In July, the IDA was served with papers by M&T Bank because developer has defaulted. We only discovered this when our new Administrator found files with requests for information had never received responses from IDA. This is a large illustration of the kinds of things this Board faces. I'm concerned about fulfilling our fiduciary responsibilities.

JM: We could have found ourselves in default. As a new Board, we asked the former Administrator what the status was of the site, and even though a lawsuit had begun, he told us that everything was fine and that the developer had plans in the pipeline.

SG: We could go through a list of challenges we face, but tonight I'd like to know what does the ABO want from us. We've asked for an On-Site Review.

Mr. Farrar: If we were to do a review here, we would expect you to have a complete list of properties. If you don't even have that, that is what our Report would say.

SG: Where are we at now? Can your office write a letter saying that the ABO can't even do an On-Site Review because we do not have a complete list? That would be helpful to us in moving us forward.

Mr. Farrar: It sounds like you're going down the right path. You're trying to gather the data, and that's the guidance I would probably give you. Look for other sources. Frequently the County –you may have to do a search of their records. Another thing I would suggest is that you get the information from the State Comptroller's office that was filed in prior years (2005, 2006). I would be skeptical that those reports were 100% accurate at the time, but at least it is something you can start with.

JM: Requests a timeline when IDA might anticipate an On- Site Review so that they can gather documents. Mr. Kidera explains that they are currently performing other Reviews and that they can't give schedule a specific review time right now.

Mr. Kidera: What I'm hearing is that you believe not all the records you would need exist, and some of the records that do exist you are being denied access to.

JM: Co-mingling of City and IDA documents.

Mr. Kidera: Our position is that those records, even though they might be co-mingled, are the records of the IDA and you have a legal right to those records. The records of the IDA are public documents. Our position would be that you could sign a Confidentiality Agreement and still make public those records of the IDA, because they are public records. A Board member or members acting on behalf of the Board are not employees of the city, and you are entitled to release your own records. I'm not sure what you mean by Intermingled: any actions that the City Council took acting as the prior Board were actions of the IDA and therefore are available to the current board. I'm not sure that there is anything we (ABO) can do to compel them to comply.

Mr. Farrar: Let's say you've asked for complete audited records of a property and they've turned over some documents which refer to other documents that aren't there. What's your next step? I don't see any other options than: they've turned over everything they've got and its going to be a long-term building up of the files, or the individual that has given you the records knows that there is more and intentionally has not given them to you. It is either unintentional or intentional.

Mr. Kidera: It's not unique here. It's a common situation in other IDA's.

JS: describes attempts to retrieve files from former counsel.

Mr. Kidera: IDA records belong to the IDA. How you choose to get them is not up to the ABO, but the IDA has legal rights to them. Any reports that have been submitted to the State Comptroller include all records associated with those reports. Also check to see if your auditor has access to any records.

Mr. Kidera: Even if we come in with an On-Site Review and cite you with failures to comply this might not remove the impasse.

Mr. Kidera: Requests that the IDA send a letter to ABO acknowledging that they are out of compliance and in order to comply what information can we provide to ABO under the law. We prefer to respond formally. I think our track record is pretty good in terms of carrying out responses in a timely manner.

You don't have to go back ten years and reconstruct properties you owned, but if you go back to all properties you owned in 2004, 2005 that is a start to comparing 2007 report. You will be required to report any new properties you have acquired or disposed of since then in addition to a complete roster of properties. If you make a good faith effort to meet

MC: For the record, back in September did our then-Director try to contact your office to file some preliminary things?

ABO: not that they are aware of.

Discussion of how to do PARIS filings and various filing timelines. See <http://www.abo.state.ny.us/paris/paris.html>. MC and LZ attended PARIS training.

Mr. Kidera. Again, if IDA makes a specific request of us we will be happy to respond. I'm not sure that we can be any more helpful in obtaining information from City. Our mandate to report and collect records is pursuant to a request of all other state agencies, the Governor, and the Legislature. We share information with all of these other State Agencies, the Governor and the Legislature, and that can be compelling.

JS: The statement that IDA records are our records is very important. If records were intermingled at a time when the IDA was paying the salaries of an entire department of the City, they are our records nonetheless.

Mr. Kidera: That is correct. It's not uncommon for IDAs to be staffed by local government employees, by contract employees. But we recognize then that actions taken by such persons on behalf of the IDA are IDA actions. And records produced by them on behalf of the IDA, even if employed by the City, are the records.

DB: is there an ABO equivalent of Robert Freeman's department? If this IDA has questions, can we direct them to someone? Mr. Kidera: If you send us specific questions, our team tries to respond as soon as possible. Some questions come up frequently from other public authorities so check the website for these. We don't render legal opinions, but might make references. You are not obligated to abide by these.

MC: What about job descriptions for CEO's and CFO's. It might not be practical to have different personnel for each title.

Mr Kidera noted that other IDA's postings are available in PARIS. This IDA could possibly find a similarly-organized IDA as a model.

MC: Is it required to post public notices of committee meetings? Mr. Kidera: I believe so but you can refer to Robert Freeman on that. And that would fall under governance. I would encourage you to review and update your By-Laws.

JS: The training was very well done and I found it to be a valuable experience not only to go through it but to build rapport with my fellow board members.

Mr. Kidera: We try to facilitate and train to create good boards that ultimately do not need us looking over their shoulders.

SG: Thank you for coming. We will be in touch with you shortly.

SG: Motion to adjourn. MC: Seconded. **VOTE: Unanimously Passed.**

Meeting adjourned.

[Agenda Item #4 (Adjourn to Executive Session re Legal Advice) was not addressed or moved.]