

City of Newburgh
INDUSTRIAL DEVELOPMENT AGENCY
(“IDA”)
MINUTES OF MEETING
August 17, 2009

Present

Board Members: Richard Bedrosian
Michael Curry, Treasurer
Sean O’ Shea
John Penney, Secretary
Joshua Smith, Vice-Chairman
Jerry Maldonado
Thomas Whyatt, Esq., IDA Counsel
Excused Absence: Spencer Gulliver

1. Roll Call. Taken.

The Board agreed to change the order of the Agenda to accommodate a special presentation by the Hudson Valley Center for Innovation, which is planning to relocate to OCCC. The Vice-Chairman introduced Orange County Community College Trustee Dr. Arthur Anthonisen, who is also Chair of the National Board of the Association of Community College Trustees. Dr. Anthonisen is closely involved with energy initiatives announced by President Obama in Detroit – training for new kinds of jobs. The Vice-Chair described the importance of the possibilities of the new energy initiative as community colleges can be models and here we have a trustee from Orange County Community College who has been deeply involved in these negotiations. This energy initiative is being spearheaded by County Executive Edward Diana.

The Vice-Chair noted that since the West Tech project was initially presented in 2003, energy technology has changed significantly and this presents a new opportunity to develop the West Tech project.

Presentation by Hudson Valley Center for Innovation (“HVCIT”). Les Neumann, Managing Director, and Donald Perritt, Managing Director of Shiva’s Karma LLC.,

There followed a PowerPoint presentation on the Wind Power Initiative (“WPI”), a 501(c)(3) consortium. Mr. Neumann distinguished between an ‘incubator’ and ‘accelerator’ program. This is an accelerator program, with a distinguished Board of Directors and an Advisory Board, vetting entrepreneurs. Companies accepted into HVCIT are assigned a team of Directors (level “C” nationwide cadre of executives).

Key marketing points for Distributed Wind Technology (DWT) research and development companies to base operations here:

- Duty-free environment around Stewart Airport
- Transportation networks. Rail, road, water and air access that can be utilized right here in the Hudson Valley
- Skilled labor force (training programs at community colleges)

Foreign Companies are attracted to these benefits and this is why HVCIT is partnering with OCCC and other community colleges in the region. This environment maximizes real-world testing. DWT is a low-impact technology; vertical axis turbines work for mid-range energy needs. Jobs will evolve.

What HVCIT offers:

- Paid Internships for students.
- Space
- Labor
- Research
- Funding.

260 foreign manufacturers have expressed interest in HCVI. Four or five are currently firm prospects.

There followed a brief question and answer period. The Board thanked HCVI and asked to be kept apprised of progress so that the IDA can work with, and benefit from, this initiative.

2. Proof of Notice of Meeting. Accepted

3. Request for Bills and Communications. Letter from the Authority Budget Office (“ABO”) regarding the IDA’s current non-compliance. MC will draft response which will include a copy of the Auditor’s Report. Mr. Whyatt suggested that the ABO can instruct the audit candidates which gaps can be filled for 2008.

4. Approval of Minutes of July 23 Meeting.

SO: Motion to approve.

DB: Motion Seconded.

VOTE: Unanimously adopted.

5. Treasurer’s Report

Status of outstanding Live Work Learn Play (“LWLP”) invoice for \$7800 in 2007 (plus expenses). MC requests that Courtney Kain write a letter to give them the opportunity to submit proof of work changes or any other contract changes. The invoice seems in excess of their contract; it appears that \$13,000 was billed against a \$7,800 contract.

Urban Design Associates (“UDA”). IDA has paid \$38,000 against a \$20,000 bill.

JM: There has been no response to calls and messages for an explanation if there is additional proof of expenses.

MC: Courtney Kain should sign the request letters for any additional information so that we can resolve these issues.

SO: Explain the “split” column.

MC: split means multiple invoices were paid with one check.

SO: What is the explanation for our \$14000 deficiency? Is this deficiency going to be reflected in the 2008 Audit?

MC: Explanation of Accrual Method of Accounting, which the IDA is required to use. I want to straighten out the way items have been booked before we do the 2008 Audit.

The Treasurer reported the month-end July balance. An automatic bill from CompuServe is still being withdrawn.

MC: Motion to pay invoices from Boyle and Oxman, Tulis.

JP: Motion Seconded

VOTE: Unanimously approved

Cell Tower Property Tax Bill: current and in arrears. Late fees to be discussed with Assessor’s office.

MC: Motion to pay cell tower property tax bills, not to exceed \$4500

JM: Motion seconded

VOTE: Unanimously approved.

6. Reports on Committees

a. Governance: Report and Recommendation for Actions

JM: Board has reached consensus on 5 policies: Whistleblower Protection, Property Disposal, Code of Ethics, Investment Guidelines and Strategic Financial Assistance policies. We have modified these policies from the Westchester IDA for City of Newburgh. The Strategic Financial Assistance policy needs further language modification for green jobs. Our By-Laws, which constitute the 6th document, are not yet in a final version to vote on.

JM: Motion to ratify the following four policies: Whistleblower Protection, Property Disposal, Code of Ethics and Investment Guidelines

JP: Motion seconded

VOTE: UNANIMOUSLY ADOPTED.

(JM will send copies to TW of By-Laws Strategic Financial Assistance Policy for his review). Copies of the adopted policies will be distributed to all Board Members and TW).

b. Audit: Auditor Search for 2008, 2009 Audits

Discussion of the RFP document, and changes to the form previously used.

MC proposes issuing separate RFP's for 2008 and 2009 and add to the mix "accounting and other services as may apply" to help in re-certification. Scheduled responses for September 4, if the RFP goes out on Friday. Allot two weeks to receive and review responses, possible telephone interviews. Courtney Kain will request that the posting be administered through the Comptroller's office.

7. Old Business

Vice-Chair: open items will remain on Old Business as an internal 'tickler' to those members assigned to them.

- IDA Computer Purchase via State Contract DB obtained a document purchase number from OCS in Albany. There are models as inexpensive as an HP for \$790. MC to research and select a suitable model from the website. DB to fax back purchase number.
- Verizon Building Status – JM contacted the Regional Property Manager, who just returned from vacation. JM will follow up next week.
- Report on Agreement with Leyland Alliance All necessary papers were signed last Friday and transfer of funds was executed on Friday. Money was at Key Bank today. Checks have been executed this evening. Remove from September Old Business.
- Murphy's Ditch – TW will invite their attorney to the September meeting.
- EDA Award Update: Ms. Kain: EDA contacted SHPO for clarity on the designation. Meeting set for Wednesday for IDA team to review financials and reports which we've submitted. We'll then move to the incubator issue.

JP: Are there any restrictions on any member of the IDA Board having e-mails with the EDA directly?

JS: I've had some, and Michael had one.

JP: A City Council member is being asked by corporation counsel for all of the documents she has communicated to the EDA, and was told her communications were improper and it is a violation. I'd like to have this clarified publicly.

JS: The EDA corresponded directly to the City Council after they had been unsuccessful in getting an answer from the Interim City Manager. One City Council member responded and forwarded the documents to the IDA as well. It was sent to the City Council individually, by name.

SO: What is the real monetary award number we are seeking? \$1.75mm?

CK: The reimbursement rates for a) the infrastructure and 2) the incubator portion are different rates. The paperwork for reimbursement is calculated by EDA. Incubator building is not yet factored in.

SO: There is a building there. Isn't that the incubator building?

CK: No. That was constructed by the private developer. The incubator building would be east of that. Part of the discussion is whether the first building can qualify for incubator?

We're just pulling those discussions together now. We'll have to have discussions of the cooperative measures being taken among EDA, IDA, City Council and others to resolve this situation.

DB: Was there any transfer of property from the City to the Developer before the project was finalized?

CK: I'll put that on our list for Wednesday meeting. There appear to be a series of amendments to the original agreement which we will look into. We haven't focused on our relationship with the Developer yet.

- FOUNDRY: update. Draft of extension agreement. Amendment. If anyone wants to see it, TW has it available. Paragraph 3 is the representation that board made. TW: explanation of reason and polling of Board on their declaration. Vice-Chairman will sign the Amendment and TW to notarize agreement with bank.

8. **New Business**

- a. West Street Parcel Boundaries and the DEC voluntary compliance agreement. City Planner Ian McDougall had presented options at last meeting. IDA agreed to the dissolution of separate IDA and City parcels and that a new parcel is jointly owned. This would be followed by a request to DEC to conduct a study for \$78,000 for which IDA would be obligated and then reimbursed. At end of study, the IDA would be eligible for a remediation grant.

There was a general discussion to clarify the chain of title. IDA's counsel to review a copy of the Deed that was referenced in the original agreement. IDA has 2 roles in this; as a party to the original agreement and as possible owner of a portion of the property to be remediated. Another option could be to deed the IDA parcel to the city.

There was a discussion of the timing and Board consensus was that the decision should be made as soon as possible. City Planner had indicated he would like some action before the next IDA meeting.

TW: One step is to remove the IDA from the old agreement, and then IDA has to sign off on any new remediation study. If the option is to deed it over to the City, it takes the IDA out of the process. The IDA may want to be part of it.

JP: If we remove the property from the old agreement, won't that affect the original grant, which was an entire block agreement?

MC: Clearly we need to discuss where the upfront \$78,000 comes from and splitting the 10%. Let's move tonight to have our attorney investigate the deed structure itself and how best to finish it so we can put the wheels in motion. We can have a special meeting if necessary.

JM: The City Planner needs the IDA's okay to withdraw from the voluntary program and have us sign off on the new program. Do we have to wait?

TW: In either case the City is still able to apply for the grant.

JP: Motion to move on Plan number one, subject to disposition of the land and that we apply for the grant.

JM: Seconded

Discussion: TW: The Board is considering two items: First approving signing the document releasing "lot 5" from the old voluntary clean-up agreement. Second cooperating with the City in applying for the new agreement, either as co-owner of Lot 5 or by conveying its interest to the City.

MC: Is everyone confident that this was Ian's recommendation?

There was a general discussion that the City Planner should return for a special meeting to clarify the issues and his recommendation.

SO: Motion to Table JP's motion and call a Special Meeting.

MC: Motion Seconded.

VOTE: Unanimously approved to Table the motion and to call a special meeting for the 31st.

9. Next Monthly Meeting September 21.

10. Adjourn to Executive Session to Discuss Litigation.

JM: Motion to Adjourn to Executive Session.

SO: Motion Seconded.

VOTE: Unanimous Vote to Adjourn to Executive Session.