

**City of Newburgh
INDUSTRIAL DEVELOPMENT AGENCY
("IDA")
MINUTES OF MEETING
September 21, 2009**

Present

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

1. Roll Call. Taken.

Richard Herbek, Interim City Manager, introduced himself to the Board and asked to sit in on the meeting for the first hour. Acknowledging his unfamiliarity with IDA boards, Mr. Herbek stated that his intention is to promote cooperation between the City, and Staff and the IDA and that he is working towards making improvements and "doing things right". He further offered to help mediate and resolve the issues of the pending lawsuit, for the mutual benefit of the IDA and City. Mr. Herbek stated that the roles need a framework, perhaps through a memorandum of understanding or an agreement, to define the roles and develop a successful relationship.

The Board gave a brief description of how it used to be organized and the challenges they currently face to bring the IDA into compliance. Mr. Smith described areas in which the City and the IDA need to be working together, such as the new SUNY Orange initiatives in green technology. The EDA West Street Project which was 'neglected' by the City was cited as another example in which cooperation between the IDA and the City can possibly lead to significant financial benefit for the City of Newburgh.

2. Proof of Notice of Meeting. Accepted

3. Request for Bills and Communications and Treasurer's Report (combined). \$173,300 operating account. No deposits made. Mr. Curry described the Bank of America money market account (\$6,000) and recommends rolling it into the Operating Account. He gave a KNEC account status. Mr. Curry listed the bills received and deposits made since last month.

Mr. Curry: Motion to deposit receipts, and to pay Nugent, Hausler, School Tax Bill, Oxman Tulis and Ms. Boyle.

Mr. O'Shea: Seconded.

VOTE: Unanimously approved.

Mr. Curry: Motion to pay DPW Sanitation bill for 150 Ann St.

Mr. O'Shea: Seconded.

VOTE: Unanimously approved.

Mr. Curry: Motion to close Bank of America account and move proceeds into the Operating Account.

Mr. O'Shea: Seconded.

VOTE: Unanimously approved.

There was a discussion of the need to re-organize bookkeeping and record-keeping between the IDA and Ms. Kain's office. Mr. Curry will return original documents to the City files; a mechanism is needed for timely dissemination of mail and notices to the IDA. The Treasurer also expressed concern that he receives statements of miscellaneous items with no supporting documentation.

4. Approval of Minutes of August 17 Meeting.

Mr. Bedrosian: Motion to approve.

Mr. O'Shea: Motion Seconded.

VOTE: Unanimously adopted.

5. Reports on Committees

- a. **Governance:** No report. Mr. Whyatt needs to review two policies (Investment Guidelines and Strategic Financial Assistance); the other four have already been adopted (Code of Ethics, Procurement Procedures, Whistleblower and Property Disposition).
- b. **Audit:** Discussion of Urban Design Associates and Live Work Learn Play contracts and final invoices. The previous IDA passed a resolution in July 2008 not to exceed \$50,000 of planning work from UDA. The LWLP contract was for \$7800 plus expenses. The IDA has paid \$13,000 and there is a \$7800 invoice pending.

Mr. Whyatt advises the contracts were signed by the Director of Planning for the City and that the IDA was never a party to the original agreement. Therefore it has no responsibility for these bills. Mr. Herbek inquired as to work product of the groups and Ms. Kain gave background of the work plan, the three phases and an explanation of the "20/20" group of businesses that were formed as an advisory group for the project. An accounting of expenses and invoices and total remaining amounts followed. The 20/20 group was funded partially through CDBG in 2009, for lighting, security camera, and enhanced trashcans. City Counsel authorized these in the 2009 budget.

The discussion on how to proceed concluded with the consensus that Mr. Whyatt should draft a response to each company outlining the IDA's position that it owes nothing.

Auditor Search for 2008, 2009. Ms. Kain gave an update on the RFP. 100 letters were sent out and five letters of interest were received. Prior year audits are available now on the website for interested parties to review. The closing date is September 30, when RFP's will be opened. Audit Committee will then meet and schedule interviews for the top 3 proposals.

Mr. Curry suggested that the IDA request competent bookkeeping advice from an auditor before we go into an audit and it is not appropriate for the selected auditor to give bookkeeping advice. The issue refers to incidents where money goes out from one line and into another bookkeeping account, whereas they need to be recorded back into the proper line.

There was a discussion of reporting requirements and timelines for the ABO. The 2007 Audit was not finished until July 2009. In order to recertify the IDA and remove it from the delinquent list, the budgets need to get in on a timely basis. Newburgh is one of 3 delinquent IDA's in the State.

There was a discussion of the LDC and the NCDA also being delinquent, and the efficiencies possible for all three public authorities to do RFP's together. By consolidating the work, the City would save money and time, and the City Council should be part of such a

discussion. For this year, it might be necessary to do them individually. The ABO indicated they would support appointing a civilian board.

7. Old Business

- **Crown Castle:** Kyle MacCallum, Property Specialist, refreshed the Board on the Cell Lower lease. Revenues are split 60/40 split between IDA and Crown. A new tenant, Metro, will be paying \$1500 monthly to IDA; \$1000 to Crown. Other tenants are T-Mobile and Sprint. The size of the property is significantly larger than assumed and the Assessor intends to re-assess.

Mr. Curry: Motion to authorize Crown to move ahead with its contract with Metro.

Mr. O'Shea: Seconded the motion.

VOTE: Unanimously approved.

Mr. MacCallum will send the Treasurer a reconciliation report.

- **1 Corwin Court:** Ronald Kossar, Esq., attorney for Corwin Management, refreshed the Board on the PILOT/Tax facts: 30,000 sf building, 2/3 occupancy rate now, 105 employees if fully occupied. 2008 revaluation resulted in PILOT costs being more than if they opted out. Assessed on full value in 2008 at \$4,157,000. Assessor stipulated to reduce it to \$2,565,000. Mr. Kossar is proposing a retroactive formula change to the lease agreement which began April 27, 2001 and goes until April, 2010.

There was a general discussion of the need for statistical data to support PARIS reporting. Mr. Curry requested that any modified agreement include a job support sheet.

Mr. Whyatt outlined two alternatives: 1) amend the pilot agreement and permit client to benefit one year earlier from the reduction in taxes. The client would save \$12,000. 2) Alternative would be that the clients pays \$12,000 now and exercises the option to take title to the property, ending the PILOT agreement. The PILOT Agreement was not available for review.

Mr. Bedrosian: Motion to table the matter so that the PILOT agreement can be located and reviewed, so that Counsel can determine whether IDA can amend it, or just the Lease Agreement.

Mr. O'Shea: Seconded the Motion.

VOTE: Unanimously approved to Table the Proposed Amendment.

- **IDA Computer Purchase via State Contract** Still Open. Mr. Bedrosian has obtained a document purchase number from OCS in Albany. There are models as inexpensive as an HP for \$790. Mr. Curry will research and select a suitable model from the website.
- **Verizon Building Status** – Mr. Smith is following up with contacting the Regional Property Manager. The contact person was on vacation when Mr. Maldonado last attempted to reach him.
- **Report on Agreement with Leyland Alliance** Work is moving head and ground has been broken. Two Board members attended the recent Press Conference. Regarding the IDA Loan: The IDA will be receiving interest payments for deposit in the operating account. Principal reduction payments will go back into the 'revolving fund'.
- **IDA Property list.** Lists have not changed. GIS does not have an updated list from the City.

- **EDA Award Update:** Ms. Kain: The Quarterly Report was sent in. Financial Reports are ready; deeds are still outstanding. Annual audit will be due, including a review of any federal awards. The incubator issue is still outstanding. The four options appear to be: 1. Terminate for convenience and close out the project and receive the \$850,000 for the infrastructure. 2. Virtual Incubator Concept – committing to developing, but not necessarily providing, a physical location. 3. Negotiate with Mr. Lambert and the EDA to identify the completed building (Building 1) as the incubator. Could the building be purchased from Mr. Lambert? 4. Per the terms of the original agreement, since its timeline was not met, initiate proceedings to take the property. The IDA needs to decide what formal request it will make to the EDA.

Mr. Bedrosian pointed out that the original agreements need to be scrutinized since it appears that a loan from the IDA was ‘forgiven’, and that each time performance benchmarks were missed, the contract was renegotiated. There was a general discussion of the best course of action now. The Hudson Valley Initiative appears to be a possible ‘fit’ with the incubator concept. Ms. Kain supports the idea of assembling the other lots in order to create a substantial technological development. The group discussed an Orange County incubator initiative and the consensus was to obtain more information on that.

Mr. Bedrosian requests a forensic audit of all finances related to this project, and that the Developer has lived up to his fiduciary responsibilities. The IDA loaned the Developer \$50,000 to acquire the properties that we were selling him. Ms. Kain is attempting to document with a spreadsheet the invoices and which entities paid which invoices, so that when the EDA reimburses the City, it can be determined how the funds will be applied. For instance, the road was paid for variously by the City, IDA and UDAC.

There was a discussion of what a forensic audit would cost and what it might uncover that could be reviewed by appropriate authorities such as the Attorney General’s office or the US Attorney. Could payments be recaptured for non-performance or based on fraudulent representation? Triad Associates were to oversee the project and have been paid \$32,000 to date, and there is a remaining outstanding invoice.

Mr. Bedrosian: Motion to request a forensic audit of the EDA project, subject to fiscal ability to pay

Mr. Curry: Seconded

VOTE: Unanimously approved

- **NYSERDA Grant:** Les Neumann requested a support letter from the IDA for a grant due Oct. 15. The IDA Letter to him would be due 10th. Consensus of the IDA is that they do not want to send a ‘boilerplate’ letter. Ms. Kain will ask Mr. Neumann to send an Executive Summary so that she can draft a specific support letter. Mr. Bedrosian volunteered to help with the letter.
- **Murphy’s Ditch:** Mr. Whyatt requested that Ms. Kain contact Mr. Korn to request that he attend the next meeting, with his attorney, to make a payment proposal.
- **West Street Parcel Boundaries and the DEC voluntary compliance agreement.** Mr. MacDougall is proceeding with this project. Mr. Whyatt questioned whether or who is preparing the deed for consolidation of Lot 5.

8. **New Business**

- Contract Extension until December 31 for Kippy Boyle's Services.
Mr. Curry: Motion to extend the contract.
Mr. Bedrosian: Motion seconded.
VOTE: Unanimously approved.
- Private Activity Bond Act. Discussion of the August 13 letter from Empire State Development regarding an initial allocation of \$423,000. To hold allocation, proposals must be sent by Oct. 15 and be initiated by the end of the year. There was a general discussion of how the mechanism would work. Mr. Whyatt suggested there is a possibility the funds can be reserved, if not used this year. Mr. Whyatt advises that IDA seek advice of a bond counsel. Two firms in Newburgh would like to stay in the city. One is Green Tech, the other is printing and art publishing on an international level. Both could potentially benefit from this Act. To determine whether this is timely and financially viable, the consensus is to do further research and make calls to people with expertise in this area.
- City of Newburgh and IDA Partnership. Ms. Kain expressed concern and discomfort that the relationship is unclear and unresolved. She is in an administrative role on the EDA Project, but what kind of formal mechanism do we have? Mr. Whyatt explained that in litigation they are trying to work out the terms. Mr. Curry explained that the City and IDA have the Charter and a 2005 council resolution so there is a framework, which might need modification, but it exists. Mr. Whyatt suggests that she convey her concerns to her manager and the attorney handling the litigation. Ms. Kain is specifically concerned about the administrative services, such as copying. Mr. Curry suggested that clear record-keeping will help sort out costs associated with IDA services.

9. Next Monthly Meeting October 19.

10. Adjourn to Executive Session to Discuss Litigation.

Mr. O'Shea: Motion to Adjourn to Executive Session.

Mr. Bedrosian: Motion Seconded.

VOTE: Unanimous Vote to Adjourn to Executive Session.