

**City of Newburgh
INDUSTRIAL DEVELOPMENT AGENCY
("IDA")
MINUTES OF MEETING
JUNE 21, 2010**

Present

Board Members: Josh Smith
Richard Bedrosian
Michael Curry
John Penney
Sean O'Shea

Excused Absences: Spencer Gulliver, Jerry Maldonado

Administrative Director: Courtney Kain

Counsel: Thomas Whyatt, Esq.

Corporation Counsel: Bernis Nelson, Esq.

Guests: Gerry Sanchez, Polonia.
Albert Weiss (Foundry Developers II)

1. **Roll Call.** Mr. Smith called the meeting to order.
2. **Proof of Notice of Meeting.** Accepted
3. **Approval of Minutes of May 17, 2010 Meeting.**
Mr. Curri: Motion to approve the minutes as corrected.
Mr. O'shea: Motion seconded
Vote: Unanimously approved.

Upon Mr. Smith's suggestion, the Foundry Quarterly Report was moved ahead on the agenda to accommodate Mr. Weiss.

FOUNDRY QUARTERLY REPORT Mr. Weiss, representing Foundry Developers II, updated the Board on the project status since the IDA gave an extension, in September 2009. In October, 2009, the lender (Imperial Bank) withdrew its funding and placed a lien on the property. Foundry Developers filed a counterclaim and litigation began. However, the FDIC closed Imperial Bank on December 28, 2009. Because of the unsatisfied lien on the property, NYS attorney general's office will not permit them to issue an Offering Plan. Therefore banks won't loan for financing, and they are unable to sell units for the next phase.

The Condominium Association Board and Management have been negotiating the ongoing issues which began with the previous owner. Within the next few weeks, they hope to discuss joining legal forces to leverage their power and resolve legal issues so that construction financing and unit pre-sales can resume. The Condominium Association Board issued a written statement to the IDA, which Mr. Smith distributed and was read into the minutes. Members of the Condominium Association Board were offered an opportunity to speak, but chose not to. Mr. Bedrosian noted the consequences to the Association owners if the project were not to succeed.

IDA members stated that they want the project to succeed. Since the IDA is not part of any litigation, or negotiations, the Board asked Counsel what role they could provide. Mr. Whyatt said the developer is currently in compliance with the IDA and has until 2011 to fulfill

its obligations, at which time the IDA could approve a request for an extension. Mr. Smith concluded the discussion by asking Mr. Weiss to continue updating the Board in a timely fashion.

4. Request for Bills and Communications.

- Ms. Nelson asked for clarification on a June 3, 2010 bill from Tarshis, Catania regarding the Savoy. The city audit showed open bills from 2009, pertaining to the State court case, totaling \$5,619.73. Mr. Curry said that bills from Tarshis, Catania were previously sent to the City's attorney. The June 3, 2010 letter is the first communication to the current IDA board since September 2008. Ms. Nelson said the bills need to be removed from the City's auditor reports if they aren't city responsibility. There was a discussion of inviting Tarshis, Catania to an executive session to resolve the communication issues.
- Ms. Kain presented a letter from M&T Bank, trustee for GEMMA's bond obligations on property located at 132 Broadway. Mr. Whyatt advised the Board to retain bond counsel; either Ken Bond who was counsel of record at the time, or another. A RFP or RFQ is not required. Mr. Bedrosian requested the original bond documents to review the IDA's rights and obligations. Mr. Smith queried the Board.

Mr. Curry: Motion to authorize the Administrative Director to seek advice and recommendations from Ken Bond regarding the Notice, subject to the Treasurer and the Chair.

Mr. Bedrosian: Motion seconded.

VOTE: Unanimously approved.

- **Request from the Waterfront Advisory Committee ("WAC").** Mr. Smith presented a request from the WAC to co-sponsor a public meeting to gain more information on Waterfront development plans. This is in response to rumors and concerns about public lands and agreements. Mr. Smith recommended co-sponsoring such a meeting as a strong public event. He distributed information about work the developer is doing in Yonkers. Ms. Nelson informed the Board that at the July 8 Work Session, Leyland Alliance will make a public presentation on the status of their commitments in Newburgh. From the City's perspective, there is not a clear sense of direction.

Mr. O'Shea: Motion to support a request from the Waterfront Advisory Committee to co-sponsor a public meeting to update the community on waterfront development plans.

Mr. Bedrosian: Motion Seconded.

VOTE: Unanimously approved.

5. Reports on Committees

Audit Committee. The committee is drafting an internal control policy, based on a sample given to them by accountants. A final draft will be prepared for the July board meeting. They are also reviewing the Checklist of other policies that need to be reviewed in order for

re-certification. The State Authority Budget Office was called, and regarding the IDA's audit status, the Board needs to send a letter to both the ABO and also the State Representative.

Governance. There was no meeting. Mr. Smith requested that the Board continue to direct any comments to Mr. Maldonado.

Treasurer's Report. Mr. Whyatt reviewed the resolutions for Key Bank signatories and confirmed that they are "not valid without two signatures".

Mr. Bedrosian: Motion to file a new signatory resolution with Key Bank.

Mr. Penney: Motion seconded.

VOTE: Unanimously Approved.

Mr. Curry reported over \$401,000 in the treasury as the result a payment by Sprint following their Audit report. The IDA Board is now over the FDIC insurance limits. There was a discussion of the cell tower construction and the Crown Castle agreement. Mr. Curry then explained the monthly report.

Mr. Penney: Motion to approve payment of two invoices.

Mr. Bedrosian: Motion Seconded.

Vote: Unanimously approved.

There followed a discussion of the Agreement with the City for administrative services. If the City is unable to handle bookkeeping functions, Mr. Curry recommends that a part-time bookkeeper be hired by the IDA. PARIS reporting will require a collaborative effort with the City. Mr. Curry will discuss procedures with Sedore.

Mr. O'Shea: Motion to table the Administrative Services discussions until the other Board members can be present.

Mr. Curry: Motion seconded.

VOTE: TABLED (eyes: Messrs. Curry, O'shea and Smith; opposed: Messrs Bedrosian and Penney:

4. Old Business

Mission Statement Revisions: Mr. Maldonado will present an update at the July meeting.

IDA/City Council Working Committee: Mr. Maldonado is not present, and the report will be held over to the July meeting.

- Administrative Services Agreement: The City Council approved it on June 14. Mr. Curry stated that this agreement is based on budget numbers, but doesn't include financial services. The 2005 Agreement referenced "audit-ready records". A discussion followed as to how to track expenditures to stay within the budget. Mr. Curry suggested that time sheets be completed by the City staff. Mr. O'Shea asked said that the agreement is not based on work, but on our budget. Mr. Smith said that the NYS laws have changed, and that there is more emphasis on fiduciary responsibility. Ms. Kain noted that time has to be tracked on funded projects, and that the department already does that, with a weekly report.

Mr. Whyatt said that records are important so there's no co-mingling with other work. Time records are valuable and part of the audit standards.

The Agreement with the City uses real numbers and percentages which were based on the 2010 budget. Mr. O'Shea recommended that with each payment, timesheets be attached so they are audit-ready. Each Board Member present expressed concerns about being able to support the expenditures to the Planning Department.

Mr. Penney: Motion to adopt the Agreement with the City.

Mr. Bedrosian: Motion Seconded

VOTE: Unanimously adopted.

There followed discussion of Ms. Kain's position with the IDA, in lieu of a new Department head, Mr. Ed Lynch, beginning work on July 1. Ms. Nelson gave an introduction to Mr., Lynch's extensive background, which includes two Master's Degrees. The position of Administrative Director for the IDA is not yet settled.

Mr. Bedrosian: Motion made to acknowledge and praise Ms. Kain's work and efforts during her tenure as Administrative Director.

Mr. Penney: Motion Seconded

VOTE: Adopted by Acclamation.

Armory Acquisition. Ms. Kain reported significant interest in giving the City recommendations on an implementation plan. She confirmed that there will be deed restrictions.

132 Broadway RFQ: Ms. Kain reported the city is working with Pace on plans for distressed properties. An RFQ will be developed through our partnership with them. Pace will hold a presentation on July 19, conflicting with the regular IDA Board meeting. There followed discussion of rescheduling the IDA meeting so that board members can attend. Ms. Kain will e-mail the Board.

Public Transportation & Planning 17K Study. Mr. Smith asked if the plan takes into consideration the needs of Newburgh. Ms. Kain will get update from Ian MacDougall.

Unitex (Fifth Generation): Mr. Whyatt recapped the purpose of Unitex' request for a sales tax exemption. He said the Board needs to see the original arrangement before seeking ABO advice as to whether it will be viewed as a new exemption or an extension. Regarding the PILOT, Mr. Whyatt recommended that the payments should go to the City, not the IDA. Ms. Nelson will discuss this with the Comptroller.

Murphy's Ditch. The new Easement Agreement language will include a 5% late fee, and a lien on the property if a Certificate of Occupancy is granted without IDA being paid \$45,000.

Mr. Bedrosian: Motion to have counsel finalize the Easement Agreement and prepare a Resolution,

Mr. Penney: Motion Seconded.

VOTE: Unanimously approved.

EDA Award Ms. Kain said the City is still waiting for the check. We received a bill in December 2009 for \$1832.15 for work done relating to cleanup on West Street (2002-2008). This would have been an 'allowable' expense. There is a legitimate question as to

whether the DEC should send a bill several years after a federally funded grant is closed. Ms. Kain will look into our options, but Ms. Nelson said it must be paid or a penalty starts. Mr. Whyatt also suggested that “Newburgh Entities” is confusing and should be questioned.

West Street Project Ms. Kain said there is no new information, and she is waiting for the reimbursement check to arrive. Northeast Development agreed to remove the encumbrance, but there has been no action taken.

Verizon Building Inspection. Ms. Kain is scheduling an appointment with Solar Consortium and Les Neumann and Verizon. She will include any Board members who would like to participate. Please contact her.

1 Corwin Court. An intern is working in the Planning Department to flush out all PILOT agreements and calculations. Ms. Kain handed out the initial review, which will be updated to include the UNITEX PILOT.

Directors’ Insurance. Ms. Kain said that three agencies responded to the Board’s requests, and sent very similar applications. Once all of the Board members have answered the questions, Ms. Kain will forward to each agency to get quotes.

5. New Business

Ann Street Property: Mr. Gerry Sanchez, principal of Polonia, addressed the Board. Polonia is under contract with Mr. Amadeo to buy 3 lots on Ann St. Mr. Sanchez asserted that he purchased a fourth lot eight years ago from the City as part of a package deal of 7 buildings and 2 lots. However, it was never included in the closing, and title is still held by the IDA. Mr. Sanchez is purchasing lots 15, 16, and 17. The IDA lot is #14. These Ann St. lots connect to 153 and 155 Broadway, and allow access, parking and expanding space. A small building in on lot 17. Mr. Sanchez already owns lot 13.

Mr. McDougall asked for a copy of the tax maps to review the lots. There was a discussion of a fence severing Lot 16. Mr. McDougall said the plans generally fit into the current draft future land use plan which designates the area as mixed use. The Zoning Board rejected parking areas on Broadway and Ann St. is the preferred parking area. He offered to put together notes which will elaborate on the land use plan.

Board members asked how soon a set of plans would be presented to the Planning Board. Mr. Penney asked for the original paperwork on the sale. Mr. Sanchez said he had sent copies many times over the years to the Department of Planning and Economic Development.

The Board will review the historic data in order to determine if they are in a position to sell the lot, and then determine a price.

West Street Parking Lot. CMs. Kain researched the history but was unable to find any agreements for residents to use the parking lot. The DPW will erect “No Trespassing” signs. They will also put a note on the abandoned car, and prepare it for towing. The DPW is also considering fencing for parking lots on Ann St., West St. and Scobie Drive. It was agreed the signs should read “No Trespassing/Property of the IDA”. The Board discussed the importance of proper signage to avoid situations such as the IDA property abutting the Dupont site, where an entity is applying for grants to study the property, without the IDA’s permission.

8. Adjournment The next IDA Meeting is scheduled for Monday, July 19, 2010.

Mr. Penney: Motion to adjourn and move into Executive Session regarding Hudson Valley Lighting and Ann Street (Mr. Sanchez).

Mr. Curry: Motion seconded.

Vote: Unanimously approved.