

**CITY OF NEWBURGH
INDUSTRIAL DEVELOPMENT AGENCY ("IDA")
MINUTES OF MEETING
March 19, 2012**

Present

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

Excused Absent: Jerry Maldonado (participated by phone but cast no votes.)

Counsel: Thomas Whyatt, Esq.

In Attendance: Craig Skelly, Chief Financial Officer
Ian MacDougall, City Planner
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 February 9 Monthly Meeting**

Mr. Penney: Motion to Approve the February 9 Minutes.
Mr. O'Shea: Motion Seconded
Vote: Unanimously approved.

3. **Bills, Communications and Treasurer's Report** Mr. Curry presented the Treasurer's report and submitted eleven invoices for payment. He requested a motion to accept payment of the invoices as presented.

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

4. **Report from the Chair**

Mr. Smith met with council person Gay Lee, to explain our difficulties completing components required for re-certification. A meeting with the City Council is scheduled for March 22 . The Chair reviewed the agenda for the Agency meeting with the City Council (Schedule A attached). A quorum of the Board will be present, but it was agreed that no actions would be allowed at the meeting.

The Board reviewed the Agenda items and agreed to stress the 'value-added' recovered funds that this IDA Board has provided for the City.

The Chair discussed a planned meeting with head of the Greater Newburgh Partnership on March 26. A quorum will also be present for the meeting but no action will be permitted. The purpose of the meeting is to discuss plans for when the Agency is re-certified and to discuss Agency benefits as they relate to plans for the Land Bank and revitalizations efforts of the Greater Newburgh Partnership

5. **Report from Executive Director**

- Met with Jude Green of NCAC to discuss entering into a Memorandum of Understanding for BOA assistance for the Scobie Drive superfund site.
- Agency and City met with a high end furniture manufacturers that is interested in purchasing a building in the city. The meeting was also attended by Orange County Partnership. Discussion focused on potential incentives, energy conservation measures, historic PILOT, SBA 504 lending and mortgage recording tax.
- Mr. Penney asked who is chairman of the OCP Board. The Executive Director advised that Alan Seidman was President and that Maureen Halloran is executive director.
- Congressman Hinchey's office is pursuing a meeting with EPA, the City and the Agency to discuss needed remediation of potential developments sites..

6. Reports of Committees

Audit Committee: The Audit Committee met at 6 pm this evening. After reviewing the 2010 audit, the Committee recommends that the Board adopt the 2010 audit. Audits can be reviewed at: http://www.cityofnewburgh-ny.gov/gov/ida_audit_reports.htm

Mr. Curry: Motion to adopt the 2010 Audit.

Mr. Bedrosian: Motion seconded.

VOTE: Unanimously approved.

2011 Audit: Mr. Curry updated the Board on BST's progress on the 2011 Audit. BST field work is completed, and they will meet with Sedore shortly. Ms. Waivada notified the ABO that the Agency will complete its 2011 submission as soon as the 2011 audit is completed.

Governance Committee: There was no meeting of the Governance Committee. The Governance Committee is reviewing a recapture policy on future projects to assure compliance with job retention and creation, relocation, PILOT payment lapses.

7. Old Business.

The Foundry. Mr. Whyatt counseled the Board to have the Chair read a statement into the Minutes. Due to litigation, there should be no more comment at this time.

STATEMENT BY CHAIRMAN JOSHUA L. SMITH REGARDING IDA ACTIONS WITH RESPECT TO THE FOUNDRY AT WASHINGTON PARK March 19, 2012

On March 15, 2012, the City of Newburgh IDA sought leave to intervene in a foreclosure action brought by City National Bank against the Foundry Development Group, LLC (FDG), which owns 60 unimproved condominium units in The Foundry at Washington Park development. The motion was filed with the New York State Supreme Court, Orange County, in Goshen. The case has been assigned to Hon. Robert A. Onofry, Acting Supreme Court Justice.

The IDA has sought to intervene in the foreclosure because the IDA has a property interest, which is known as a "reverter" interest, in the unimproved condo units that are subject to the foreclosure action. Specifically, the IDA has the right to take title to the units on its own behalf, or on behalf of another developer, if the IDA wishes to do so.

To further protect its interests, the IDA thus also served notice, on March 15, 2012, of its intention to exercise this reverter right and take title to the 60 units.

The bank seeks payment by FDG of approximately \$1.6 million dollars loaned to FDG for the purchase and some improvements FDG has made to the units. The bank and FDG have

been in litigation for more than a year now, however, and have failed to settle the matter. The IDA is concerned that the value of the units, and therefore the value of its reverter interest in the units, is being degraded while the parties continue to litigate instead of working to complete the development of the units.

Furthermore, the IDA wishes to prevent the units from being unduly burdened in the future by an excessive mortgage debt if the parties fail to work out a settlement of the foreclosure action.

By intervening in the foreclosure litigation and pursuing its reverter rights as to the condo units, the IDA is seeking to protect its own property rights as well as to help bring about a resolution that will best serve the IDA's goal to assure that the 60 undeveloped units are improved and put on the market as soon as possible.

We do not know how soon a decision will be made on the IDA's motion for leave to intervene. To protect the confidentiality of the IDA's litigation strategy, the IDA will make no further public comments on the litigation, nor will its staff or counsel respond to questions from the public or the press.

On March 14, 2012 Mr. Whyatt filed a Motion to intervene in the lawsuit between City National Bank and Foundry Development Group, LLC. The IDA is arguing that it has a property interest in the foreclosure action and has been led to believe that the issue would be settled by the FDIC in October. It still has not been settled and to protect the property, the IDA seeks to intervene in the litigation to, among other things, protect the property from being subject to an excessive mortgage lien as a possible result of the settlement. Much of the money included in the mortgage never went into the ground and has not benefited the property (possibly \$700,000). If IDA exercises the Reverter Clause, it does not want the property to be subject to the loans. Ms. Waivada asks permission to discuss situation with the city. Mr. Suarez, a prior owner of the property, has also filed a motion to intervene in the lawsuit.

Corwin Court: Mr. Whyatt recited the history of the situation in which \$275,000.00 is owed to the City. It is now being litigated. He has filed a Motion for Summary Judgment, which was filed on March 2, 2012, and is waiting a response

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

Pierces Road: Mr. MacDougall presented a draft plan of subdivisions. As part of a Plan of subdivision, the drum area would be separated from the developable parcels. The subdivision process could begin in April. Mr. MacDougall will present this request to the Council. Discussion about who would ultimately own the drum cache area. Mr. Whyatt asked what the Planning Board's role would be. Would board approval be necessary to do survey? The subdivision is the result of a discussion that the City Planner had with a local business interested in expanding its operations on the IDA-owned property or elsewhere in the County. The company would utilize state tax credits for the clean up.

As the developer has not discussed acquisition of the property with Agency, the Executive Director suggested that the Council should be advised as the Company could decide to move out of the city and further, that the city has a role in moving the project forward.

The project is time sensitive as the Brownfield Cleanup Program ("BCP") (developer pays cleanup costs and receives a tax credit for the cost) ends in 2015. Mr. MacDougall said the draft concept application doesn't require a registered Plan of Subdivision. A Registered Plan of Subdivision will be finalized if the applicant is accepted into the program.

The Executive Director noted that the Scobie Drive was purchased by the Agency for \$197,000 from the NYS Dept. of Transportation over 20 years ago. She suggested the Agency should consider having an appraisal on the property.

Mr. Penney: Motion to authorize undertaking an appraisal of the Scobie drive property and move forward with an agreement with the NCAC

Mr. Bedrosian: Motion seconded.

Discussion: Mr. Curry: the Agency can assess its properties at any time. Due to the fact that we have a Disposition Policy we need independent appraisals of our properties. We can use the boilerplate RFP for future work. A general discussion of how the appraisal process would work.

VOTE: Unanimously approved.

NCAC The Executive Director met with NCAC's acting director Jade Green, and consultant George Turkel. NCAC is willing to work on an application with the City and the IDA. They would have administrative functions, but City and IDA would still retain input in scope and outcome. The three entities should come together for a meeting to discuss the application. NCAC is going to apply in September. The Agency's consultant continues to provide input in the NCAC planning process.

Cell Tower. Resolution No. 2012-3-19-1 was presented to approve a memorandum from the Chair to the City to deed the property back to the IDA. along with a draft resolution for the City. The documented 'history' has been sent to the city manager and corporation counsel. The City Council must move on it. Mr. Whyatt would then prepare the documents for transfer and recording. The Board discussed how the annual and monthly payments break down, in anticipation of extending the agreement. Ms. Waivada suggests research from other communities to find reasonable rates.

Mr. O'Shea: Motion to approve Resolution No. 2012-3-19-1.

Mr. Curry: Motion seconded.

VOTE: UNANIMOUSLY PASSED.

Approval of Annual Reports for 2009 & 2010. Ms. Waivada presented the Annual Reports for the Board to review and adopt in compliance with ABO reporting requirements.

Mr. Curry: Motion to approve the 2009 and 2010 Annual Reports as presented by the Executive Director.

Mr. Bedrosian: Motion seconded.

Discussion: Mr. Whyatt confirmed that Ms. Kain's appointment in 2009 had been approved by the Board. Mr. O'Shea: amend the 2010 to remove reference to the 2011 Report.

VOTE: Unanimously passed.

Mission Statement: The Board agreed to table review until the April meeting.

NEXT MEETING: The next regular meeting of the IDA Board is re-scheduled from April 23 to April 30 to allow time to complete the 2011 Audit so that it can be adopted at the meeting.

The meeting was adjourned at 9:50 pm.

Respectfully submitted,

C. K. Boyle
Recording Secretary

 April 30, 2012

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>
Joshua Smith	X			
Richard Bedrosian	X			
Michael Curry	X			
Jerry Maldonado			Excused	
Sean O'Shea	X			
John Penney	X			

The resolution was thereupon duly adopted March 19, 2012.



**City of Newburgh
Industrial Development Agency**

83 Broadway, Newburgh, NY 12550 (T) 845-569-7369 (F) 845-569-9700
<http://www.cityofnewburgh-ny.gov/gov/IDA>
Email: ida@cityofnewburgh-ny.gov

SCHEDULE A

*Joshua L. Smith, Chair
Richard Bedrosian, Vice Chair
Michael Curry, Treasurer
John Penney, Secretary
Jerry Maldonado
Sean O'Shea
Theresa G. Waivada, Exec. Director*

Presentation to the City Council of Newburgh

March 22, 2012

A G E N D A

Accomplishments September 2008 to Present

- Impediments
- Compliance
- Article 78
- EDA grant
- Contributions to the City
- City cooperation

Recertification— status

Open Issues

- Cooperative agreement with NCAC
- Cell Tower Site, see attached memo.
- Disposal of Residential properties

2012 Action Plan

- City-IDA partnership for economic development
- City/IDA/NCAC partnership for BOA applications to facilitate eventual redevelopment of superfund, city and IDA sites
- Recertification Announcement and Outreach
- Marketing Opportunities
- Workshops

The agenda will be finalized at the March 19 meeting of the IDA.

Schedule B

City of Newburgh Industrial Development Agency

ANNUAL REPORT – January 1 to December 31, 2009

1. **Principal Address:** City Hall, 83 Broadway, Newburgh, NY 12250

2. **Agency and Mission:** The Agency was established in 1982 under New York State General Municipal Law 18A, section Section 913:

For the benefit of the city of Newburgh and the inhabitants thereof, an industrial development agency, to be known as the CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of his chapter upon industrial development agencies. It shall organize in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. Its members shall be appointed by the governing body of the city of Newburgh. The agency, its members, officers and employees, and its operations and activities shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter. It shall be the successor in interest to the agency created by chapter three hundred four of the laws of nineteen hundred seventy-one.

3. **Membership:** The Agency consists of seven member appointed by the governing body of the City of Newburgh. The agency's bylaws states that any one or of the members may be an officer or employee of the City. A member may continue to hold office until a successor is appointed.

4. **Acts of the Agency** require a quorum of four members and majority vote of four (4) on any action

5. Board Members – January 1 to December 31, 2009

<u>Name</u>	<u>Profession</u>
Richard Bedrosian	College Professor, retired
Michael Curry – Treasurer	Regional Businessman
Spencer Gulliver – Chair	Local Businessman
Jerry Maldonado	Ford Foundation Program Manager
Sean O'Shea	Bouillon Inventory Accountant, US Mint
John Penney – Secretary	Retired: Public Safety Officer and Union Leader, and local business man
Joshua Smith – Vice Chair	Former: College President Chancellor / (California, NYC and New Jersey), Ford Foundation Program Manager

--Independent Members: All

--ABO Training: During 2009, the entire Board participated in Board Training given by CUNY and Albany Law.

--Attendance: There were 14 meeting in 2009

Richard Bedrosian	attended 12 of 14 meetings
Michael Curry – Treasurer	attended all meeting
Spencer Gulliver – Chair	attended 6 meeting
Jerry Maldonado	attended 12 of 14 meetings
Sean O’Shea	attended 12 of 14 meetings
John Penney – Secretary	attended 13 of 14 meetings
Joshua Smith – Vice Chair	attended all meeting.

5. Committees of the Board:

Governance Committee: Spencer Gulliver, Jack Penny, Joshua Smith and Jerry Maldonado

Audit and Finance Committee: Michael Curry, Richard Bedrosian, Sean O’Shea, Jack Penny

6. Fiscal Management/Internal Controls:

In late 2008, the Board encountered difficulties in gaining financial information of the Agency’s audits, financial files and bank accounts as well as project files from Agency staff. When asked by the Administrator to sign a Confidentiality of Records drafted by the City of Newburgh City Council prior to gaining access to IDA records, the board refused.

In early 2009, under direction of the Treasurer, the Agency moved to:

- Freeze all financial activity until the Agency was given access to its financial information.
- End disbursement approvals by City Comptroller and Acting Administrator
- Give signatory power for checks under \$1000 to the Treasurer of the Agency.
- Transferred signatory powers from the Acting Administrator to the officers of the Agency.
- Required that the Board authorize all payments by resolution at monthly meetings.
- The Treasurer maintained the Agency’s financial system in QuickBooks.

Audit: In December of 2008, the then Administrator executed a contract with Nugent and Haussler PC to undertake the 2007 Audit without consent of the Board. In 2009, the Audit Committee and Board approved the \$12,000 contract. The audit

was completed in May of 2009. It detailed short comings, non compliance, issues with management and access to financial information, lack of controls.

The Audit Committee began the process to establish proper management and controls.

See: <http://www.cityofnewburgh-ny.gov/gov/docs/AuditlettersFinal2007.pdf>

7. Executive Officer, Personnel and Agency Operations:

Note: The Administrator of the Agency, a part time position, is appointed by the City Manger as provided by the City Charter:

ARTICLE XIV

Department of Planning and Development

[Added 1-27-2003 by L.L. No. 1-2003]

§ C14.00. Establishment; head.

There shall be a Department of Planning and Development, headed by a Director of Planning and Development, who shall be appointed by the City Manager and who shall serve at the pleasure of the City Manager.

§ C14.01. Director of Planning and Economic Development.

The Director of Planning and Development shall be appointed on the basis of his education and experience in carrying out the duties of the position. Among the Director's functions and duties, but not by way of limitation, shall be the following:

- A. To act as a full-time administrator of the Department, the Newburgh Local Development Corporation and the Newburgh Industrial Development Agency offices to ensure a coordinated and comprehensive approach to community and economic development within the City of Newburgh.**
- B. To develop and administer a combined and integrated staff to support the Newburgh Community Development Agency, Newburgh Local Development Corporation and the Newburgh Industrial Development Agency and other community-based programs recognized by the Council.**

a. Agency Staff and Compensation Schedule

No staff received an annual of Salary of \$100,000 or more. The Agency was provided staffing services for the following positions from the Department of Development and Planning and from the City of Newburgh Archivist for storage of IDA records at a cost of \$43,644:

Administrator *
Secretary/Assistant to the Administrator
City Planner
Archivist.

*(In 2009, Lourdes Zapata Administrator resigned and the City Manager assigned Courtney Kain to serve as interim Administrator on a part-time basis.)

8. Activities/ Management/ Compliance

a. Procurement/ Services:

A legal services contract was awarded to the firm of Oxman, Tulis, Kirkpatrick & Whyatt of White Plains following an RFP and interviews of potential Candidates.

The Agency, following a posting, search and interviews contracted the services for the recording secretary.

The Agency consented to honor the audit contract for 2007 that was initiated by the previous Administrator without Board approval.

b. Legal Action:

In December of 2008, the City of Newburgh Industrial Development Agency's (NIDA) part time Administrative Director with City approval drew a check from the Agency's account in the amount of \$388,825.97 payable to the City of Newburgh, purportedly for the purpose of reimbursing the City of Newburgh for staffing services allegedly provided to the NIDA over the past few years. The check had been drawn without the NIDA's knowledge or authorization. On May 6, 2009, Agency counsel commenced a Special Proceeding pursuant to CPLR Article 78, petitioning the Supreme Court, Orange County to order the return of the funds to the NIDA. The proceeding was settled by a Stipulated Order of Settlement, so ordered by the Hon. Lewis J. Lubell, J.S.C., on December 17, 2009, directing, inter alia, that the City of Newburgh return \$190,000 to the NIDA's operating account, and that no further charges be made against the NIDA for staffing services provided by the City of Newburgh through the end of 2009. The funds were returned to the NIDA account on or about December 15, 2009. (The Stipulated Settlement is attached.)

c. Fiscal Oversight:

The Agency, on the recommendation of the Treasurer and Audit Committee, limited the Administrator's access to the Agency's finances, bank accounts and check book. A fiscal management process was put into place and continues to evolve. The Treasurer was approved to sign checks under \$1000; all other expenditures are approved by the Board at monthly meetings. The work was guided by Audit Committee.

d. Audit and Committee: Issued and RFP, interviewed responses and contracted with Sedore & Company to undertake audits for 2008 and 2009. It supervised the 2008 audit, which involved extensive investigation of records by the auditors; it was not completed until in 2010. In May 2009, the Audit Committee reviewed and acted on the findings letter of the 2007.

e. Governance Committee and Transparency: The committee finalized new by-laws and policies. The Agency adopted by-laws, policies, as well as management and operational measures consistent with the PAAA of 2005, Article 18A of the General Municipal Law of New York State, established a website and posted information to: www.cityofnewburgh-ny.gov/gov/IDA.htm
The work was guided by the Governance Committee.

A representative of the State Comptroller met with several board members to discuss difficulties in accessing files and financial data from staff assigned to the Agency. A chief examiner in the Comptroller's office advised the officers to set parameters consistent with state law and regulations.

Agency Counsel briefed members on the 2009 provisions of the PAAA.

f. Administration:

In the spring of 2009, the acting Administrator resigned and head of the City's Community Development Block Grant Program was appointed, by the City Manager to replace her. The new appointment was approved by the Agency.

The Board asked the Administrator to request that the City provide the Agency with office and meeting space.

To better understand the activities of the Agency, the Board asked the Administrator to provide the Agency with background briefings on owned property, possible projects, planning, real estate, contractual commitments and billing, explanation of items in previous budgets. Joint meetings with the City Council were requested as well.

Early in 2009, The Agency's Administrator advised the members that the IDA's files were intermingled with Planning, Economic Development, CDBG and LDC files and could not be separated. To date, the Agency was provided copies of the former Administrator's 2005-08 work files. The former Counsel to the Agency provided his confidential files to the Agency, but the City has not yet relinquished the intermingled files as the independence of the Agency by Newburgh's Corporation Counsel was acknowledged. A major issue in identifying Agency was exacerbated because projects, contracts, and grants were jointly undertaken by City and Agency.

Following a firing and/or replacements of several City Managers, The City appointed a new Acting City Manager, Richard Herbek. The Agency met with the newly appointed manager to discuss the newly mandated transparency and independence requirements have changed the operation and

role of the Agency within City government. This began a period of cooperation.

A contract agreement with the City of Newburgh for administrative services was approved.

g. Grants:

The Agency and City received a U.S. Economic Development Administration for construction of infrastructure of City and Agency owned parcels on West Street for commercial development. The Agency authorized Counsel to work out a closeout of on the grant and reimbursement for costs incurred by the City and Agency.

Mortgage Agreement: The City requested that the Agency accept \$300,000 from a federal grant to the city. The funds would serve as mortgage to Leyland Alliance and Habitat for a joint project to develop 24 units of housing. The project was approved but did not move forward and the Agency returned to funds to City.

h. PILOT:

Corwin Court PILOT: A review of the Agency indicates that the Agency entered in a lease with Corwin Management for a commercial project; the lease is for a PILOT. Unfortunately, the PILOT does not require Corwin Management to provide required data for its tenants. This 2001 project was a joint City-Agency assisted project. In 2009 The Agency notified Corwin Court Management of their failure to make PILOT payments to the City.

j. Property Ownership and Interests:

Foundry Development LLC Project: The Agency approved an extension date for a certificate of occupancy deadline to 12/31/11. (Noted: The Agency has a 'right of reverter' as a condition for the construction 60+/- condominium units which were taken in rem by the City of Newburgh and transferred to the Agency.

Potential Development: The Agency discussed certain properties in the City noting how IDA benefits, once the Agency was recertified, could foster commercial, job generating development. (Former NYS Armory and Verizon Building, Scobie Drive industrial site, West Street).

Ownership: The Agency asked Counsel to undertake title searches to identify Agency owned land and project-fee owned parcels held by the IDA. City records did not differentiate fee and beneficial ownerships.

Murphy's Ditch Easement: Agency Counsel clarified a 2006 easement agreement that the Agency's Administrator failed to execute. The property was transferred by the City to the Agency and is located over property in the City's Reservoir watershed. The Agency approved the transfer of the easement in 2006 when no disposition policy existed.

Pierces Road Industrial Site/Brownfield: This 15 acre parcel is zoned for industrial use. It was purchased by the IDA from the New York State Department of Transportation (surplus land) in 1984 following the completion of I-84. It was previously been owned by the City as part of **or adjacent to the** City of Newburgh landfill. The level of contamination (city landfill and Dupont/Buyers drum wastes) on the site is not clear at this time. The Agency authorized its Counsel to pursue the status of the property. The Agency's and adjacent site owned by the City of Newburgh is the subject of a Brownfield Opportunities Area grant by the NYS Department of State to a community not for profit. A portion of the parcel would be identified as a possible Drum Cache site by EPA in 2011.

Cell Tower Site: The property is leased to the IDA by the City, but was previously owned by the IDA. The Agency receives fees from the users of the cell tower. The Board asked why the property was taxed. (The issue went unresolved into 2012 at which time the Agency asked that the City transfer title back to the Agency.)

City of Newburgh Industrial Development Agency

ANNUAL REPORT -- January 1 to December 31, 2010

NOTE: The City of Newburgh Industrial Development Agency has not complied with General Municipal Law Section 859 for 2007, 2008, 2009 and 2010. The Agency anticipates recertification will be achieved in 2012 upon completion of its 2011 Audit and PARIS reporting.

1. Principal Address: City Hall, 83 Broadway, Newburgh, NY 12250

2. Agency and Mission: The Agency was re-established in 1982 under New York State General Municipal Law 18A, section Section 913:

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3. Membership: The Agency consists of seven member appointed by the governing body of the City of Newburgh. The agency's bylaws states that any one or of the members may be an officer or employee of the City. A member may continue to hold office until a successor is appointed.

4. Acts of the Agency require a quorum of four members and majority vote of four (4) on any action

5. Board Members – January 1 to December 31, 2010

<u>Name</u>	<u>Profession</u>
*Richard Bedrosian - Vice Chair	College Professor, retired
*Michael Curry - Treasurer	Regional Businessman
Spencer Gulliver	Maritime officer
*Jerry Maldonado	Ford Foundation Program Manager
*Sean O'Shea - Asst Treas.	Bouillon Inventory Accountant, US Mint
*John Penney - Secretary	Retired: Public Safety Officer and Union leader, and local business man
Joshua Smith - Chair	Former: College President /Chancellor (California, NYC and New Jersey), Ford Foundation Program Manager

Members are all Independent Members

ABO Training: was completed in 2009 by all members at CUNY or Albany Law.

* A number of Board Members attended a second training session in 2010.

Meeting Attendance: There were 12 meeting in 2010

Member:	Number of Meetings attended*
Richard Bedrosian	11
Michael Curry – Treasurer	11
Spencer Gulliver – Chair	2
Jerry Maldonado	7
Sean O’Shea	9
John Penney – Secretary	12
Joshua Smith – Vice Chair	9

*Absent members are encouraged to participate by conference call.
(Participation is not counted for a quorum, no vote is permitted.)

5. Committees of the Board:

Governance Committee: Spencer Gulliver, Jack Penny, Joshua Smith and Jerry Maldonado

Audit and Finance Committee: Michael Curry, Richard Bedrosian, Sean O’Shea, Jack Penny

6. Fiscal Management/Internal Controls:

The Board continued to refine its fiscal management, banking transactions and internal controls. Disbursements are approved by the Board at their monthly meetings. As the Agency transitioned into stability, it issued an RFP for services of a financial officer. A contract was approved in February 2011.

7. Lateness of Annual Audits, Report and Decertification:

The 2008 Audit was adopted in November, 2010 following Audit Committee and Board review and response to findings.

The 2009 Audit was completed and approved in December 2010.

The current Board members, appointed in 2008, were faced with bringing the Agency into compliance with state laws and policies. To do so, the Board with little resources wrested financial control of its funds from the city, sued the city for inappropriately reimbursing itself for ‘services,’ investigated contracts and property

records and began the process to separate agency files and records that were co-mingled with the files of the Department of Planning and Development.

As a result of the 2008 Audit findings, the Audit Committee began the process to establish proper management and controls. In late 2010, the Board issued an RFP seeking the services of financial officer.

Minutes detailing the Board efforts, findings of the independent auditors and responses by the current board can be reviewed at the audit section of <http://www.cityofnewburgh-ny.gov>

7. Executive Officer, Personnel and Agency Operations:

a. Administration

Operations: In 2010, all aspects of the Agency's operations were guided by the Administrator as directed by the Board. The Board had full control of the Agency's finances.

Personnel: As reported in previous annual reports, ARTICLE XIV of the City of Newburgh City Charter states that the Agency is:

- an integral part of the Department of Planning and Development,
- requires that the Director of the Department of Planning and Development also served as Administrator of the Agency, and
- that the Administrator served at the pleasure of the city manager.

Please note that in February 2011, the Agency hired a compliance consultant. Then, in September of 2012, the Agency, through contractual services, appointed a part-time Executive Director, knowledgeable in the administration and management of industrial development agencies.

Executive Director: In 2010, the City Manager appointed a permanent Director of the Dept. of Planning and Development, thereby replacing the Agency's Administrator that was appointed in 2009.

Recertification: By the end of 2010, the Board realized that its assigned personnel were unable, notwithstanding the Stipulation Order of Settlement of 2009*, to complete the tasks for compliance reporting. The Board asked its Counsel to assist them in securing a consultant to facilitate the recertification process. (This was accomplished in February, 2012.)

*In 2009, the City removed more \$388,000 funds from the Agency for reimbursement of services without the Agency's knowledge or approval. The Agency filed an Article 78, resulting in a Stipulation Order of Settlement requiring the City to complete the filing of reports required for recertification and to return funds that were found to be incorrectly attributed to the Agency.

b. Agency Staff and Compensation Schedule

No staff received an annual of Salary of \$100,000 or more. The Agency and City approved an interagency agreement for the following positions from the Department of Development and Planning and from the City of Newburgh Archivist for storage of IDA records at a cost of \$45,492.

Administrator *
Secretary/Assistant to the Administrator
City Planner
Archivist.

The recording secretary, hired in 2009, is paid on an hourly salary.

*(In 2010, The City of Newburgh City Manager appointed Edward Lynch as Director of the Department of Planning and Development. The Agency approved him as Administrator.)

8. Activities/ Management/Compliance January 1- December 31. 2010

a. Procurement/ Services:

Directors and Officers Insurance was secured.

.A contract with Sedore was executed for undertaking annual audit for 2010 for \$15,750.

The Agency authorized the Administrator to negotiate an agreement for 20 hours of services from C.T Male Engineering to represent the IDA at a stakeholders meeting of the Newburgh Community Action Committee in conjunction with implementation of a NYS Department of State grant under the Brownfield Opportunities Assessment program.

d. Audit and Finance Committee: The 2008 Audit was completed and approved in late 2010 and work on the 2009 audit began.

e. Governance Committee The committee continued its work in reviewing and/or finalizing the Agency's policies, website and review of the Public Authorities Accountability Act of 2009.

f. Grants

The US Economic Development Administration Public Work grant was closed out for \$858,345. The Agency received its share of the reimbursement.

g. IDA-owned and fee-owned Property

Scobie Drive Industrial site is under investigation by EPA as it may contain buried drum from nearby Dupont-Stauffer superfund site. An existing, local and international business, Hudson Valley Lighting, advised the Board of its interest in consolidating its operations on the property.

A city list of properties attributed to the Agency and PILOTS was completed. After extensive review, in 2011, the Agency determined that a number of its affordable housing bond projects were provided PILOTS by New York State not the Agency. The Agency completed a property list.

Budget: The Agency adopted a Budget for 2010.

h. Projects

PILOTS:

- A PILOT for Unitex, aka, Fifth Generation and A&P Linen Supply Company was approved by the Agency in 2006. The Agency executed a PILOT in 2010 for the recently completed commercial laundry which created 140 jobs.
- Corwin Management PILOT – requests for PILOT payments were ignored. Counsel is handling the issue.

GEMMA Bond Default Notice and Demand to Bondholders: M&T bank advised the Agency that the GEMMA project was in default as a result of not making 3 bond payments. The payments are made by Orange County government as lessee of the commercial office space. The Agency issued a FOIL request to Orange County to determine why the payments were not made. The Agency learned via press that the County has issued the bond payments to the project owner. The owner did not forward the payment to the Trustee. The Agency's secured bond counsel advise, a new trustee was appointed at the request of the counsel for the bond holders, but despite Agency efforts and requests, neither M&T nor the new trustee have pursued clearing the default or requiring the project developer to respond to a code violation or Agency request for co-insurance.

St. Lukes Garage 2005 Bond Issuance: Bond Issuance was audited by the IRS. The Agency authorized Counsel to seek assistance from bond counsel (Robinson & Cole) as needed. The audit was completed in 2011.

The Agency approved a resolution to amend the 2005 bond agreement to permit a "bond swap"