CITY OF NEWBURGH
INDUSTRIAL DEVELOPMENT AGENCY ("IDA")
MINUTES OF MEETING
May 20 2013

Present

Board Members:	Joshua Smith, Chair
	John Penney, Richard Bedrosian, Nancy Thomas
	Sean O'Shea. Michael Curry, Jerry Maldonado
Counsel:	Thomas Whyatt, Esq., Counsel
Staff:	Theresa Waivada, Executive Director
	Craig Skelly, CFO
Guest	James Slaughter, Director of Planning & Development

1. **Roll Call** Mr. Smith called the meeting to order at 7:15pm. A quorum was present.

2. **Proof of Notice of April 15th Meetings**

Mr. Penney:	Motion to Approve the April 15th Minutes.
Ms. Thomas:	Motion Seconded.
VOTE:	**Unanimously approved.**

Discussion of summer meeting schedule: June 17th, July 15th meetings will be held in the Law Library due to City Council meetings. Mr. Smith suggested the August meeting be cancelled, and that, depending on business, the Board could also cancel the July meeting.

3. **Communications**

- A letter was received from the owners of Highpointe & Hudson Pointe apartments, seeking $10,000,000 in volume cap to rehabilitate two senior apartment buildings. IDA will submit the request to Empire State Development on their behalf. (Letter is attached.)
- RE: The Foundry Plans. Ms. Waivada will ask the buildings department to comment on the plans. They are 2007 plans and they have to be updated. Mr. Whyatt: The Foundry needs to show compliance when they begin the application process, and it is part of their Segment I. It will be helpful if the Building Department lets the IDA know when they converse with the architects. Segment I will begin with the architects redrawing of the plans and updating them to meet new code requirements; also, rental units will proceed in a different way than condominiums because they will be completed for rental. The first 11 Certificates of Occupancy (for rental) are due in 21 months from signing the plans will be available in the IDA office for any board members to review.

  (Mr. Papaleo of Benzina Inc. arrived and the Board agreed to rearrange the Agenda to review his application).

Benzina Inc.is rehabilitating a former service station on the corner of Robinson & Broadway which was purchased in 2008. The site is considered an important entrance to the central business district; it is currently a vacant corner on Broadway and Robinson. The IDA is being asked to approve an Inducement Resolution under the Small Business Program (under $100,000). No public notice is required, and the project can be turned around very quickly. To avoid the issue of speculation, the IDA will not issuing sales tax letter until Benzina Inc. has a leasee. The members reviewed photographs of other properties that Mr. Papaleo has purchased and rehabilitated. It was noted that the property is in Census Tract 3 (Low/Mod Population>51%) an impacted census tract and is part of the old Empire Zone, so it meets tests for eligibility for retail. Mr. Papaleo: it covers the length of one city block. Cost is estimated $1.3 to 1.5 million for

redevelopment of the site in a gas station and convenience store. IDA will help close the gap between development costs and rental income. Timeline is between 6-8 months. The Board asked questions about DOT curb requirements for 9W side, tanks will face side street, not 9W. No repair shop will be on the premises. The lessee will ultimately contract with a national chain such as BP or Valero. Mr. Papaleo is seeking an exemption for sales tax, mortgage recording tax, and possibly a PILOT if approved by the city. Employees: anticipate 4 jobs to start out, possibly more, since it is a 24-hour operation. Discussion followed on other properties rehabilitated by Mr. Papaleo – including their business on Ann St., and 264 Washington St. The Board then reviewed the Inducement Resolution.

Mr. Penney:	Motion to approve Resolution 2013-5-20-1
Mr. Maldonado:	Motion seconded.
Discussion:	Any references to County of Westchester will be changed to "City of Newburgh".
VOTE:	**Unanimously Passed.**

5. **Bills and Treasurer's Report.** Mr. Curry presented the Treasurer's report (ending balance of $675,248.83 and requested a motion to approve payment of 9 invoices as presented.

Mr. Bedrosian: Motion to approve nine checks as presented.
Ms. Penney: Motion Seconded.
VOTE: Unanimously approved.

6. **Report from the Chair.**
   - There is a Zoning Advisory Committee meeting tomorrow. It will concentrate primarily on lists of open space needing to be preserved. It will go back to proposed zoning map to see discrepancies.
   - Quassaick Creek Watershed Alliance & DEC have been cleaning debris behind the fence on Lake St. Apartments (fee ownership by IDA). Planted over 100 trees and shrubs as protective planting, stormwater management and beautification. Residents helped as well as volunteers. This same group along with County Planning will visit a hydropower facility in Gloversville. The group is working in conjunction with the Riverkeeper to do further work along the Quassaick Creek Corridor.
   - An area on Muchatoes Lake contains Belverde housing (IDA is the fee owner) that consists of affordable housing. Access to the Belverde lake frontage was facilitated by Ms. Waivada. Mr. Maldonado asked who owns the complex and the lake and was advised that the lake is owned by the city. There was a discussion of the dams along the creek and near Route 32.
   - The Professional Business Association had its Kick-Off celebration at Karpeles Museum on May 15th. Over 75 people attended, with the Mayor of Warwick as the keynote speaker. Tiombe Tallie Carter, Esq. is the President of the new association which is re-creating its self into a chamber of commerce for the City of Newburgh. Mr. Smith spoke at the gathering on IDA's programs helpful to small businesses.

7. **Report from the Executive Director**

   - In 2005, 48 Orchard St. was conveyed to Northeast Development which conveyed it to the City in 2008. It has been incorrectly reported as IDA property, but Mr. MacDougall and the Assessor have traced and corrected the records.

   - The Real Estate Summit sponsored by the Orange County Partnership was successful and well-received. It strengthened the relationship among the City, IDA and Orange County Partnership. The next OCP initiative will be to contact their list of brokers in the county and give us access to properties in the City. Mr. Slaughter suggested having a brokers meeting here in June or July to start discussion of various properties and brownfields that the City owns.

   - Film Commission: Met with Ted Doerring, James Slaughter and other city officials. Umbra Sound Stage might be eligible for IDA sales tax abatement.

- Filming is currently going on at 101 Liberty St.

- NCAC is experiencing financial problems; its executive director, CFO and several board members have resigned. There is concern about the Step BOA application pending before the Department of State for funding. The IDA's request for site investigation of its Scobie Drive property was included in the Step 3 Brownfield Opportunity Area Application. It is no longer required as broader investigation and remediation tasks will be undertaken by 5 Scobie Partners LLC under the Brownfield Cleanup Program. Ms. Waivada contacted the Department of State regarding the BOA area. If the area is certified BOA, HV Lighting would get an extra 2% tax credit. She also discussed the potential of amending the IDA's Step 3 request to cover the Agency's administrative and project costs for Scobie Partners development. Mr. Curry noted that the City and IDA wrote letters of non-support for NCAC to the state several years ago. Ms. Boyle will research the records and send copies to the Board and Mr. Slaughter. Ms. Waivada recommends that the Board ask Mr. Whyatt to reach out to DuPont Stouffer's attorneys (Nixon, Peabody). The Board authorized Mr. Whyatt to prepare a formal letter from the IDA and the City requesting a meeting with DuPont Stouffer's attorneys and the City.

- Board Member Resignation. Mr. O'Shea submitted a letter of resignation, explaining that since the Board is now in compliance, with measurable results, this is a time to step down as his goal as a member has been accomplished. Ms. Waivada reviewed the process of selecting a new board member. Notice will be posted on the website. The Board should think about recruiting from business categories that can enhance their work, such as the legal profession or real estate. The Board urged Mr. O'Shea to serve until he is replaced. The Chair and members thanked Mr. O'Shea for his service.

8. Reports of Committees.

Audit Committee: Mr. Curry sent around the NYS Comptroller's report on IDA's and noted that since Newburgh is recertified, the Board should address the Article 78 settlement agreement with the City which required the City to complete compliance. This was not accomplished and the Agency hired Ms Waivada to bring the Agency into compliance. Ms. Waivada, Mr. Smith and Mr. Curry will discuss this with City Manager in relationship to the annual service contract traditionally entered into with the city. An upcoming audit committee meeting will prepare for this discussion. He also noted that this month's income exceeded expenses. He noted that the Auditor requested clarification on the leases for the Cell tower. Those leases aren't clear and Mr. Curry wants to set the framework for the any discussions of extending leases so that proper compensation is received. Ms. Waivada explained to Mr. Slaughter that several issues with the City can be found in the Auditor's notes if he wants to review the audits.

The Agency will issue an RPF for audit services for the 2013 and 2014 audit.

Governance Committee: There was no report. The committee is working a staff evaluation process.

9. Report from Counsel:

- Corwin Management. When the taxes are settled, the IDA will sign over the deed to Corwin Management. The City Comptroller has given an updated figure on tax payments due on the PILOT. Unfortunately the amount is more than what was agreed to our in our suit against Corwin Management. Mr. Whyatt suggests agreeing on an appropriate figure to give to Corwin, which if paid by the end of the month, would enable the Chair to sign the deed. There are two unresolved issues: 1: It's unclear whether the $275,000 paid by Corwin in settlement of the IDA litigation included a full 2011-2012 school year tax or a ½ school year. Issue 2: there was a mistake made in the assessment a few years ago; the assessment was lower than it should have been. The

question is whether it can be corrected? The Board authorized Mr. Whyatt to conclude the investigations, determine an adequate final amount and report it at the June 17th meeting so that the deed can be transferred. Ms. Waivada noted that the error is resulting in addition legal costs. Mr. Whyatt: the only party that has right to collect is the IDA. There was a discussion of some of the problems incurred with PILOT payment structuring, such as formulas and timing of tax years between schools and property.

- GEMMA: Board reviewed the package of letters to Wells Fargo and M&T. Mr. Whyatt explained that M&T Bank held two roles in the transaction – as trustee to the shareholders and then as holder of the $1.4M second mortgage on the property. None of the second mortgage apparently benefited the Armory property. Mr. Whyatt will contact Wells Fargo regarding IDA's position. M&T and the county are proposing that M&T foreclose on the mortgage and sell the property to the County. M&T's letter to the Bondholders is threatening that if they don't approve the sale, the county will leave the building empty and there will be no lease income to pay to the bondholders. If the counsel for new Trustee Wells Fargo does the legwork, IDA could assess claims as to the validity of the second mortgage and IDA's need to transfer the parcel to Gemma at the termination of the bond period. There followed a discussion of the Armory and the Motor Vehicle building. Ms. Waivada noted that the City has a significant interest in the outcome of the situation. The Foreclosure action was commenced in 2008; 2 years after IDA's Administrator signed the second mortgage in 2006. Mr. Maldonado asked who will pay for the IDA attorney fees. The general discussion included what would happen if the IDA does nothing, where is liability, if a mortgage was signed without authorization by resolution, and the political context of the situation. Mr. Whyatt suggested meeting with the City to review the next course of action. If a decision is needed before next month, a special meeting might be necessary. Mr. Whyatt requested authorization to spend time on this issue.

Mr. Maldonado:	Motion to authorize Mr. Whyatt to work on the GEMMA foreclosure.
Mr. O'Shea:	Motion seconded
Discussion:	No Further Discussion
VOTE:	**UNANIMOUSLY APPROVED.**

10. Old Business. Previously discussed in reports.

11. New Business: Mr. James Slaughter was introduced to the Board. General discussion followed.

Mr. Bedrosian:	Motion to Adjourn to executive session to discuss The Foundry litigation settlement.
Mr. Penney:	Motion Seconded.
VOTE:	**Unanimously Passed.**

The Meeting was adjourned at 9:15pm, and the Board entered into Executive Session to discuss the Foundry litigation.

The Meeting was reconvened aty 9:30 and no action was taken.

Motion to adjourn was made by Mr. O'Shea, seconded by Mr. Curry and approved.

The next meeting is set for June 17th.

Respectfully submitted,

C. K. Boyle
Recording Secretary
May 20, 2013

MEMORANDUM

TO: Newburgh IDA
cc: Teri Waivada
FROM: Tom Whyatt
SUBJECT: Gemma Bonds – Request from Bondholders' Trustee
DATE: May 20, 2013

As you recall, the so-called Gemma bonds, totaling $5,700,000, were issued in 1996 to fund renovation work converting the old Armory building, on Broadway in Newburgh, for use by Orange County for county offices. The bonds are secured by a mortgage to the bondholders and are being paid off from rent payments made by the County. The property is owned by the IDA, which would under normal circumstances turn it over to Gemma Development Company, LLC after the bonds are paid off.

There have been two events over the last few years that have brought this matter to the IDA's attention.

One is your Board's discovery in 2011 that the County had started incorrectly sending its monthly mortgage payments to Gemma Development Company instead of sending them to the Bondholders' Trustee as was required by the County's sublease agreement. Three monthly payments, totaling $182,000, were retained by Gemma and have, to my knowledge, never been forwarded to the Trustee.

The other is your Board's belated discovery that the Armory property had been encumbered in 2006 by a second mortgage, made to M&T Bank, for $1,483,000, upon which M&T had commenced foreclosure proceedings in 2008.

This foreclosure action is the subject of the attached letter that was recently received from Wells Fargo Bank, Trustee for the holders of the Gemma Bonds.

The Wells Fargo letter states that Orange County, in cooperation with M&T Bank, is attempting to purchase the Armory property and an adjoining property for $1,075,000. Consent of the Bondholders and Wells Fargo as Trustee is required for this transaction to take place. Based on statements made by M&T, the Bondholders fear that the revenue stream now used to pay off the mortgages, which is the County sublease payments, may be at risk. The foreclosure could also terminate the IDA's interest in the property.

Wells Fargo has urged that the second mortgage may be invalid, because (a) the IDA apparently never authorized McKenna to sign it, and (b) terms of the first mortgage prohibit a second mortgage without Shareholder approval (which was not obtained). Wells Fargo has asked that the IDA pursue this possibility so as to protect the Bondholders and its own interests in the

property. Wells Fargo has further urged that due to defaults by Gemma, the IDA may not be required to turn the property over to Gemma when the bonds are paid off, but may instead be in a position to continue ownership of the property.

If the IDA wishes to follow up on this matter, I would research the mortgages and bond papers to determine the IDA's rights as to title to the property, and the possible claim that the second mortgage is invalid.

The Trustee's attorney has offered her firm's assistance in this endeavor.

At some point we would need to consult Bond Counsel (Robinson & Cole), but first we would need assurance that the Bondholders would pay these costs.

CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY
SMALL BUSINESS INITIATIVE PROJECT
RESOLUTION 2013-5-20-1

Regarding the
BENZINA INC.
SMALL BUSINESS INITATIVE ("SBI") PROJECT

WHEREAS, the New York State Industrial Development Agency Act and the Agency's enabling legislation, respectively constituting Article 18-A and Section 923-a of the General Municipal Law (Chapter 24 of the Consolidated Laws of New York) (the "Act") authorizes the Agency (1) to promote the economic welfare, recreational opportunities and prosperity of its inhabitants, and (2) to promote, attract, encourage and develop recreation and economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration; and

WHEREAS, an application dated May 20, 2013, (the "Application") has been submitted to the Agency by **Benzina Inc.** (the "Company") requesting financial assistance through a straight-lease transaction (as each such term is defined in the Act) for a proposed project in the City of Newburgh, NY (the "Project"); and

WHEREAS, the Project shall consist of (i) re-construction of an existing facility, and (ii) the acquisition of furnishings, fixtures and equipment (the "Project Equipment") by the Agency, by purchase, lease or otherwise, (iii) the lease, sublease, or installment sale of the Project Equipment to the Company, and (iiii) the use of the Project Equipment by the Company at its facility located at 307 Broadway, Newburgh, NY (the "Facility") for business purposes more fully described in the Application; and

WHEREAS, the Company has represented that the Project is expected to maintain and increase employment in the City of Newburgh and has made additional factual representations concerning itself and the Project upon which the Agency is relying in adopting this resolution; and

WHEREAS, the Company has represented that the requested financial assistance is essential to the economic viability of the Project, and is a necessary component of the financial structure of the Project; and

WHEREAS, the Agency intends to induce the Company to proceed with the development of the Project pending completion of arrangements by the Company and the Agency for the provision by the Agency of financial assistance; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law ("SEQR") and the regulations of the Department of Environmental Conservation of the State of New York thereunder (the DEC Regulations"), the Agency constitutes a "State Agency"; and

WHEREAS, the Agency has determined that the Project is a "Type II action" under SEQR; and

WHEREAS, the Applicant shall agree to indemnify the Agency against certain losses, claims, expenses, damages the liabilities which may arise in connection with the transactions contemplated.

NOW, THEREFORE, the City of Newburgh Industrial Development Agency hereby resolves as follows:

Section 1. Qualification of Project. The Agency hereby determines that undertaking and providing financial assistance to the Project (i) will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the City of Newburgh and the State of New York and improve their standard of living, (ii) will preserve the competitive position of the Project and will not result in the removal of an industrial, manufacturing or commercial plant of the Company or any occupant of the Project from one area of the

State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any occupant of the Project except as permitted by the Act, and (iii) is authorized by the Act and will be in furtherance of the policy of the State of New York as set forth therein.

Section 2. Authorization to Proceed. The Agency hereby authorizes the Company to proceed with the Project as herein described. The Executive Director of the Agency, or the Chairman of the Agency or any person he delegates (each an "Authorized Officer") is hereby authorized to negotiate, in accordance with the terms of the Act, the terms of the transactions between the Agency and the Company which will permit the provision of financial assistance to the Project in an amount necessary to undertake and complete the Project, including the providing of exemptions from sales and use taxation, which shall not exceed the sum of $100,000.

Section 3. SEQR. The Agency hereby finds and determines that the Project is a "Type II action" within the meaning of Section 6.17.5(c)(25) of the DEC Regulations and is not subject to review under SEQR.

Section 4. Assistance of Company. The members, representatives, and agents of the Agency are hereby authorized and directed to take all actions deemed appropriate to assist the Company in commencing and carrying out the Project.

Section 5. No Recourse or Personal Liability. No provision of this resolution or any other related document shall constitute or give rise to a charge upon the general credit of the Agency or impose upon the Agency a pecuniary liability. No recourse shall be had for the payment of, or the performance of any obligation in connection therewith against any member, representative or agent of the Agency, nor is or shall any such person become personally liable for any such payment or performance.

Section 6. Municipal Review. The Chairman and the Executive Director of the Agency, and such employees and agents of the Agency as the Chairman or the Executive Director shall direct, are hereby authorized, in accordance with Section 923-a of the Act to give notice of the Project to the affected Municipality(ies) within which the Project is located in accordance with such Section. The issuance of financial assistance by the Agency is subject to the condition that no objection by resolution of the governing body of any such affected Municipality shall have been made and delivered to the Agency within 30 days of notice being provided to such Municipality, or that the right to object be waived.

Section 7. Financial Assistance. Subject to the other terms of this resolution, the Agency, in its discretion, will provide such financial assistance as may be permitted by law and may be suitable to advance the Project, including exemptions from sales and use tax, provided, however that such financial assistance shall not exceed the sum of $100,000.

Section 8. Approval of Project Agreement. The Agency is hereby authorized to enter into a Project Agreement with the Company on the Agency's standard form for SBI Projects; the form of the Project Agreement is hereby approved; an Authorized Officer of the Agency is hereby authorized and directed to execute and deliver the Project Agreement with such changes, insertions and omissions as may be approved by said Authorized Officer, said execution being conclusive evidence of such approval; and the Secretary or the Assistant Secretary of the Agency is hereby authorized to affix the official seal of the Agency to the Project Agreement and to attest the same.

Section 9. Approval of Sales Tax Letter. The Agency is hereby authorized to issue to the Company a Sales Tax Letter on the Agency's standard form for SBI Projects; the form of the Sales Tax Letter is hereby approved; and an Authorized Officer of the Agency is hereby authorized and directed to execute and deliver the Sales Tax Letter with such changes, insertions and omissions as may be approved by said Authorized Officer, said execution being conclusive evidence of such approval.

Section 10. Approval of Additional Documents. The an Authorized Officer of the Agency is hereby authorized and directed to execute and deliver any and all documents and instruments, and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this resolution; and be it further

Section 11. Effect of Resolution. In adopting this resolution, notwithstanding any other provision hereof, the Agency assumes no responsibility for obtaining or assisting the Company in obtaining financing, including the provision of sales tax exemptions and/or other incentives, for the Project. This resolution is not a contract between the Agency and the Company and it shall not be construed as such. A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

Section 12. Effective Date. This resolution shall take effect immediately.

Adopted: May 20th, 2013

May 20th 2013

At a meeting of the City of Newburgh Industrial Development Agency (the "Agency"), held in Newburgh, New York, on the 20th day of May, 2013, the following members of the Agency were:

PRESENT: Joshua Smith, Michael Curry, Richard Bedrosian, Jerry Maldonado, Sean O'Shea, John Penney, Nancy Thomas

ABSENT: None

ALSO PRESENT:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to the Agency entering into a straight lease transaction **Benzina, Inc.**

Upon motion duly made and recorded, the **Resolution 2013-5-20-1** was duly adopted by the Agency with its members voting as follows:

Aye	**Nay**
Michael Curry	
Richard Bedrosian	
Jerry Maldonado	
Sean O'Shea	
John Penney	
Joshua Smith	
Nancy Thomas	

STATE OF NEW YORK)
: ss.:
CITY OF NEWBURGH)

I, the undersigned, Recording Secretary of the City of Newburgh Industrial Development Agency, DO HEREBY CERTIFY that:

I have compared the annexed extract of the minutes of the meeting of the City of Newburgh Industrial Development Agency (the "Agency") including the resolution contained therein, held on the 20th of May, 2013 in the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such Resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I further certify that (i) all members of the Agency had due notice of the meeting, (ii) pursuant to Article 7 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public, and notice of the time and place of such meeting was duly given in accordance with Article 7 of the Public Officers Law, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency as of May , 2013.

Recording Secretary