

**CITY OF NEWBURGH  
INDUSTRIAL DEVELOPMENT AGENCY  
("IDA")  
DRAFT MINUTES OF MEETING  
FEBRUARY 22, 2011**

**Present**

Board Members: Joshua Smith, Chair  
Michael Curry  
Spencer Gulliver  
Jerry Maldonado  
Sean O'Shea  
John Penney  
Excused Absence: Richard Bedrosian  
C.K. Boyle, Recording Secretary  
Administrative Director: Edward Lynch  
Counsel: Thomas Whyatt, Esq.  
Guests: Bernis Nelson, Esq., Corporation Counsel  
Craig Skelly, Junior Accountant  
Theresa G. Waivada, Certification Consultant  
Jim McIver, C.T. Male Associates, P.C.  
Mr. Weiss, Foundry Developer Group  
Foundry Board Members (Roy Feld, President)

1. **Roll Call.** Mr. Smith called the meeting to order at 7:05pm; a quorum was present.
2. **Proof of Notice of Meeting.** Accepted.
3. **Approval of Minutes of January 27, 2011 Special Meeting and Monthly Meeting**

Mr. Penney: Motion to Approve the January 27, 2011 Special and Monthly Minutes.  
Mr. \_\_\_\_\_ Motion Seconded.  
**Vote: Unanimously approved.**

4. **Reports of Committees**

**Governance Committee:** Mr. Maldonado said The Uniform Tax Exemption Policy draft is being finalized and will be ready for adoption within a month. Mr. Lynch noted that the Orange County IDA is reviewing assistance for Regal Bag and Colden Street properties; he suggested the Board pursue possible collaboration between the City and County IDA's.

Mr. Lynch distributed a letter from the ABO citing the March 4<sup>th</sup> deadline for remitting re-certification documentation. (See Audit Committee report for appointment of Certification Consultant.)

**Audit Committee:** Craig Skelly was introduced as the IDA's new Junior Accountant. Ms. Theresa Waivada ("Teri") was introduced as the Certification Consultant.

Mr. Penney: Motion to ratify the appointment of Mr. Skelly as Junior Accountant.  
Mr. Maldonado: Motion Seconded  
**VOTE: Unanimously approved.**

Mr. Maldonado: Motion to ratify the appointment of Theresa Waivada as Certification Consultant.  
Mr. Gulliver: Motion Seconded.  
**VOTE Unanimously approved.**

**Treasurer's Report and Bills & Communications:** Mr. Curry reported the following:

Checks written 299.99 for QuickBooks  
\$748.97 laptop and small printer/copier/scanner  
Invoices Received:  
Auditors (Sedore): \$3500, \$1225, \$2055. = \$6,780.  
Darlene Merchant: \$243.40 – Foundry Title Search  
Oxman, Tulis: \$8,5750 & \$8,635 = \$16 692.50  
Ms. Boyle: \$ 435.00  
HV Trucking \$240.00  
(Perfect Cuts Landscaping)  
Total: \$ 25,380.30  
Balance at 2/11/11: \$338,176.00

Monthly deposits will drop to approximately \$6,000 without LNA's interest payments. Paying current invoices leaves an operating account balance of \$312,796.71.

Mr. Penney Motion to pay invoices as read by Mr. Curry.  
Mr. Gulliver: Motion seconded  
Discussion: None  
**VOTE: Unanimously approved.**

Mr. Curry: Motion to close the account being held for LNA Principal Payments and to transfer the \$250 to the Operating Account.  
Mr. Gulliver: Motion Seconded.  
Discussion: None.  
**VOTE: Unanimously approved.**

## **5. Old Business.**

The Foundry. Mr. Weiss distributed the Foundry quarterly report and gave a chronology of events from 2009. (See Attachment A). Chairman Smith noted that the report was late, that the IDA has incurred attorney fees, and that City taxes haven't been paid as evidence of good faith. Mr. Maldonado said that until the minimum requirements have been met, including securing the building, an extension should not be considered. There are also Mechanics Liens on the building. Ms. Nelson noted the City's tax lien takes priority over other claims and the redemption date is in June. Historic Tax Credits for Phase III will not apply until the Certificate

of Occupancy is issued. Mr. Weiss believes the Lien Notice is leverage to pressure bank to approve the construction loan.

Mr. Penney: Motion to table the discussion until Mr. Weiss presents more information.

Mr. Maldonado: Motion seconded.

Discussion: The consensus was that the issues should be brought out now, rather than waiting until the next meeting.

**VOTE: Motion Failed.**

Mr. Weiss: the IDA cost his investors \$5 million; his partners say they should have a deed if they are going to pay. Mr. Maldonado; The City cannot wait for taxes and Mr. Weiss should not be using non-payment as a negotiating tactic. Mr. Weiss expressed his commitment to continue working with the Foundry Board to produce a viable plan. He issued a check to the Association Board for the common charges.

The current 18-month reverter clause takes effect on September 30, 2011. Mr. Wyatt advised that the IDA would have right to exercise the reverter clause to take back Title. Without a viable lender and without a financial plan it would not be in the IDA's interest to extend.

Chairman Smith requested that Mr. Weiss make a presentation at the March 21st IDA Board meeting and that he submit a written plan one week prior. Any extension would be contingent upon taxes, common charges, and IDA legal fees being paid. The Plan must include provisions for written quarterly reports every 3 months, with all events disclosed in writing, not after the fact. Mr. Whyatt asked Mr. Weiss to indicate who the ultimate decision-makers are in his partnership.

Mr. Feld said the Foundry Board will deposit the association fee check tomorrow (Feb 23). He also requested that Foundry Development pay future common monthly charges on time.

Ms. Nelson requested that the following be made part of the record:

"A discussion was held on market-rate residential condominiums and whether they could qualify for IDA financial assistance in the form of PILOTs and sales and mortgage tax exemptions. Corporation Counsel B. Nelson stated that IDA financial assistance has been granted in other parts of New York State to market-rate residential rental projects since they have been deemed commercial projects, but it is unclear whether such assistance can be afforded to market-rate residential condominiums since following construction and sale they are no longer commercial in nature."

**Active Ventilation Products, Inc. ("AVP") & PILOT Negotiations** Mr. Lynch reported that he had visited the site and that the application package approved by the Board had been given to Mr. Martin Kolt more than a month ago. Since there had been no response, he suggested that Ms. Waivada meet with Active Ventilation to ascertain its interest in working with the IDA.

**Scobie Drive**. Mr. Lynch reported on the NCAC/WRT public meeting and distributed the PowerPoint presentation; two more public meetings are scheduled. Mr. McIver recommended a geotechnical analysis be conducted which is different than an environmental site assessment. Core samplings will provide data to calculate types of possible use and associated costs. A geotechnical investigation costs \$7500-\$10,000. Presenting this

information in a prospectus makes it more attractive to potential buyers. Mr. Curry: CT Male can provide oversight to draft an RFP for equipment and associated services to perform a geotechnical investigation.

Mr. Penney: Motion to authorize CT Male to prepare the RFP for a geothermal investigation and to oversee the work at a price not to exceed \$10,000.

Mr. Maldonado: Motion Seconded

Discussion: Ms. Nelson requested a delay while the City concludes negotiations of a DPW site issue where similar work is starting. The Board went into Executive Session at Ms. Nelson's request.

Mr. Penney: Motion withdrawn

**County/City IDA Discussions:** Mr. Whyatt has spoken with the County IDA Attorney who is preparing an opinion on two condominium projects in Newburgh, but no formal discussions are planned.

**FOIL Requests: Gemma and The Foundry.** The Foundry: Mr. Whyatt is reviewing documents prior to forwarding copies to the attorney.

GEMMA: There is no response from the County to Mr. Wyatt's FOIL request, although Mr. Whyatt noted recent news articles have generated legislative interest. He advised that the IDA has an obligation to follow through on its inquiry and should also send a follow-up letter to M&T Bank.

#### **East Parmenter Street LNA Project.**

Ms. Nelson presented background on the project and an explanation of why the City can take assignment of the Note and Mortgage.

Mr. Gulliver: Motion to approve Resolution No. 1 of February 22, 2011 - Assignment of Mortgage and Note from IDA to City of Newburgh.

Mr. Penney: Motion Seconded.

**VOTE: Unanimously approved. (See Resolution attached as Schedule B.)**

#### **6. New Business**

**Bank of America Account:** Mr. Lynch explained the procedures required to close the account.

Mr. Curry: Motion to authorize Mr. Lynch to direct Ms. Marie Guida to sign documents required by Bank of America in order to withdraw funds and close the IDA account, and to deliver the final check to Tara Miller for deposit into the IDA Key Bank Operating Account.

Mr. Gulliver: Motion Seconded.

**VOTE: Unanimously approved.**

**Recording Secretary Contract.** Mr. Lynch prepared a new contract for the Recording Secretary. It includes a set fee for meetings, and an hourly rate for additional work.

Mr. Curry: Motion to authorize the Administrative Director to finalize a contract with Ms. Boyle, as Recording Secretary.

Mr. O'Shea: Motion Seconded.

**VOTE Unanimously approved.**

**7. Executive Session.**

Mr. \_\_\_\_\_ Motion to enter into Executive Session for the purpose of discussing sale of property negotiations.

Mr. \_\_\_\_\_ Motion seconded.

**8. Next IDA Meeting.** The next meeting will take place on Monday, March 21, 7:00pm. The meeting schedule for December is corrected to read "December 19".

**9. Mr. Smith adjourned the meeting at 10:00pm.**

**Respectfully submitted,**

**C. K. Boyle  
Recording Secretary  
March 16, 2011**

ATTACHMENT A

The Foundry Development Group, LLC

Post Office Box 2199  
Monroe, New York 10949

February 13, 2011

Industrial Development Agency  
83 Broadway  
City Hall  
Newburgh, New York 12550

Board of Directors:

This is respectfully submitted as Quarterly Report of Foundry Development Group (FDG), which has been updated for the February Industrial Development Agency (IDA) Board Meeting as required.

The construction of Phase III of the Foundry at Washington Park Condominium came to a halt when our lender, Imperial Capital Bank (ICB), La Jolla, California, discontinued advancing loan money to fund the cost of construction. Thereafter, ICB refused to extend the maturity date of our construction loans. During this time, ICB was under regulatory pressures from the FDIC to improve its capitalization and liquidity. It was not able to do so, and the FDIC forced ICB to close. As a result FDG has been without a lender.

Since our loan with ICB matured, we have been in litigation with them. They filed an action against FDG and the guarantors of the loan to recover a money judgment for the amount of funds advanced, together with interest. We filed a counterclaim seeking money damages to compensate us for the financial damages FDG sustained because ICB discontinued funding construction.

Shortly after the lawsuit was commenced, ICB filed a motion seeking an immediate judgment against FDG and the guarantors, which we opposed on the basis that ICB breached the lending agreement when it discontinued funding and refused to extend the maturity date of the loan.

The Judge agreed with us, and denied the motion for an immediate judgment. The Judge directed the parties to complete pre-trial proceedings, including discovery and depositions, are scheduled to be completed in the coming months. At this stage, we are not certain when the case will be scheduled for trial, but we are actively preparing our case against ICB, which, at a minimum, we believe will completely offset their lien against the property.

As you are likely aware, the entire world experienced a financial meltdown, and the commercial lending markets continue to be restricted. In addition, the residential housing market also continues to be depressed. Hence, FDG has been unable to locate a lender interested in funding the cost to complete construction of the condominium units.

FDG because the economic recovery has been slow, and it is too difficult to predict when the housing market will rebound, FDG plans on making a formal request for an extension of ten (10) years. Board of Managers of The Foundry at Washington Park Condominium is agreeable to granting FDG a ten (10) extension. As is summarized in Settlement Agreement, attached date July 27, 2010 While an extension of ten (10) years made initially appear significant, we do not see the residential housing market to rebound enough during the next three (3) years to generate significant interest by a commercial lender to finance construction.

Another reason we are requesting a ten (10) year extension is because a shorter right-of-reverted substantially diminishes the value of the property as collateral for a construction loan. FDG hopes a ten (10) year extension makes the value of the property as collateral more attractive to commercial lenders, which seems particularly appropriate given their cautiousness in the present lending market. In short, the value of the property as collateral is, in substantial part, a function of the term of the right of reverter.

Granting an extension of ten (10) years will allow FDG an opportunity to complete the project. Without granting the extension, FDG will lose its entire investment in the project, which will be a substantial hardship to FDG given its significant investment in the project.

The agreement between FDG with The Foundry at Washington Park Condominium Board of Managers July, 27, 2010 has been submitted for consideration and approval.

FDG, LLC will honor its commitment to make payments to The Foundry at Washington Park Condominium as outlined in the agreement.

Cc: The Foundry at Washington Park  
Condominium Board Directors



Albert Weiss



**ATTCHMENT B**

**RESOLUTION NO. 1 of February 22, 2011**

The question of the adoption of the foregoing resolution was duly put to vote on roll call, which resulted as follows:

	<b><i>Yea</i></b>	<b><i>Nay</i></b>	<b><i>Absent</i></b>	<b><i>Abstain</i></b>
Joshua Smith	X			
Richard Bedrosian			X	
Michael Curry	X			
Spencer Gulliver	X			
Jerry Maldonado	X			
Sean O'Shea	X			
John Penney	X			

The resolution was thereupon duly adopted.

RESOLUTION NO.: 1

OF

FEBRUARY 22, 2011

RESOLUTION OF THE CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE ADMINISTRATIVE DIRECTOR TO EXECUTE AN ASSIGNMENT TO THE CITY OF NEWBURGH OF THE NOTE AND MORTGAGE BY LEYLAND NEWBURGH ASSOCIATES, LLC IN THE AMOUNT OF \$300,000

WHEREAS, the City of Newburgh ("City") and the City of Newburgh Industrial Development Agency ("IDA") executed a Transfer Agreement, copy attached, in which \$300,000 was transferred by the City to the IDA for the purposes of a loan to Leyland Newburgh Associates, LLC ("Leyland"); and

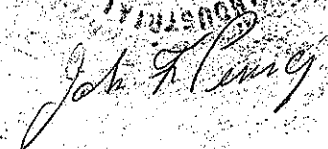
WHEREAS, Leyland executed a Note and Mortgage, both dated August 6, 2009, copies attached, in the amount of \$300,000 to the IDA; and

WHEREAS, such Mortgage was recorded on October 20, 2009 in the Orange County Clerk's Office under File No. 20090102842; and

WHEREAS, the City has requested that such Note and Mortgage be assigned to the City; now, therefore

BE IT RESOLVED, that the Administrator Director of the IDA is hereby authorized to execute an assignment of the Note and Mortgage to the City, together with such other necessary documents and instruments to effect such assignment.

This is a true copy of the resolution adopted by the IDA as Resolution No.-1-adopted on-February 22, 2011



The seal is circular with the text "CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY" around the perimeter. In the center, it says "FEB 22 2011". Below the seal is a handwritten signature that appears to read "John F. Perry".