

**CITY OF NEWBURGH  
INDUSTRIAL DEVELOPMENT AGENCY ("IDA")  
MINUTES OF MEETING  
August 15, 2011**

**Present**

Board Members: Joshua Smith, Chair  
Michael Curry  
John Penney  
Sean O'Shea  
Excused Absence: Richard Bedrosian, Jerry Maldonado, Spencer Gulliver  
Administrative Director: (Vacancy)  
Counsel: Thomas Whyatt, Esq.  
  
In Attendance: Teresa Waivada, Certification Consultant  
Craig Skelly, Chief Financial Officer  
Ian MacDougall, City Planner  
Jim McIver, CT Male Engineering

**Roll Call.** Mr. Smith called the meeting to order at 7:00pm; a quorum was present.

1. **Proof of Notice of Meeting.** Accepted.

2. **Approval of Minutes of July 18 Monthly Meeting**

Mr. Penney: Motion to Approve the July 18 Minutes.

Mr. Curry: Motion Seconded

**Vote: Unanimously adopted.**

3. **Bills and Communications.** Letter from ABO re non-reporting status. FOIL request from Newburgh Advocate; forwarded to the City Clerk's office.

4. **Report from the Chair:** None.

5. **Report from Administrative Director** None.

6. The BOA discussion was moved forward on the Agenda to accommodate Mr. McIver.

**BOA Grant – Report from City Planner & C.T. Male (See Attachment A).**

IDA's 15-acre parcel is eligible for BOA grant (NYS) for potentially contaminated areas. NCAC is administering a BOA for the 90 acres. Phase 1, pre Nomination Study, Phase 2, Nomination Study, Phase 3, Implementation. NCAC's Phase 2 study is almost completed. They will be in position to apply for Implementation Phase 3. If awarded, NCAC will make potential plans for IDA's 15-acre parcel. IDA has the option to apply for Phase 3 applying the findings of the NCAC's Pre-Nomination and Nomination studies. BOA application is due September 29.

IDA is also eligible for an EPA cleanup grant. DOT conveyed parcel to IDA in 1984/86. Maximum grant award is \$200,000; competitive applications are due in October. 20% cash or in-kind match for both grants. Staff and equipment would be in-kind. Submit a scope of work, action plan. Questions and answers about application. Messrs. MacDougall and McIver recommend

applying. IDA can approve CT Male and Ian's time. IDA can submit for multiple properties. The 2 grants work well together. An EPA assessment grant gives parameters for what you can do in Phase 3 of the BOA grant. Board asked about criteria; Newburgh meets the criteria of low income, high unemployment, environmental justice conditions. IDA could partner with the City in a joint application. NCAC has reached out to City Planner. Administrator can proceed with phase 3 implementation without owner's approval or obligation to participate.

Board discussed whether it wants to participate in the intended future uses of the full properties by NCAC. Ms. Waivada: IDA's disposition policy constrains its actions. Either assuming risks or creating risks. Mr. McIver explained that the assessment tool of the EPA grant can characterize those risks. City Planner and CT MALE consultant recommend applying. Mr. McDougall will respond to NCAC's offer to meet. He also suggests meeting with DuPont Stouffer.

## **7. Reports of Committees**

**Audit Committee:** Awaiting Bond Trustee responses for the 2009 Audit. Mr. Skelly reported discrepancies in some of the auditor's numbers. He and Mr. Curry will call Sedore & Co. to resolve this.

Review of Mr. Skelly's contract. Recommendation for 12-month renewal and modifying the contracts to permit a Board officer to execute the contract in absence of Administrative Director.

Mr. Curry: Motion to renew Mr. Skelly's contract and replace "Administrative Director" with "Chairman or another Officer"

Mr. Penney: Motion Seconded

Discussion: Mr. Whyatt recommended eliminating the Administrative Director as a general requirement and replace with Chairman or CEO.

Mr. Penney: Motion to Extend the Contract with Amended Language.

Mr. O'Shea: Seconded.

**VOTE: Unanimously passed.**

Ms. Waivada's Contract: Discussion of extending her contract by 60 days.

Mr. Curry: Motion to extend Ms. Waivada's consultancy contract for 60 days.

Mr. Penney: Motion Seconded

Discussion: Board is considering a proposal for Executive Director and extra 60 days allows for continued discussions.

**VOTE: Unanimously approved.**

**Governance Committee:** ABO reports are being prepared. Month-to-month activities are being organized to set a cyclical basis for reporting requirements. Auditor and CFO have prepared the 5-year projected budget, due by the end of October. The Chair noted that the City Manager has requested a draft proposal of the 2012 IDA support to the City. Due in two weeks.

**Treasurer's Report and Bills & Communications:** Mr. Curry distributed the monthly report (see detailed report in **Attachment B**). The opening balance was \$395,276.82. Three invoices were presented for payment.

Mr. Penney: Motion to pay invoices as presented and draft checks as indicated.

Mr. Curry: Motion seconded.

**VOTE: Unanimously approved.**

## 8. Old Business.

### BOA Grant – Report from City Planner & C.T. Male (See Item 6 above).

**PILOT and IDA-Properties/Interests Update:** Ms. Waivada is working with the Assessor for the complete list. She will also work with Ian to photograph and list all properties. On-Line map was displayed.

**The Foundry** – Mr. Weiss and his attorney Mr. Schiff are negotiating with the bank to resolve the mortgage. No further discussion at this time.

**Cell Tower:** Do our agreements with the Cell Tower sublessees require that they reimburse the IDA a portion of tax payments? Research continues as to why the property is back on the tax rolls. The City uses the tower for fire and police communications.

**Corwin Court Pilot Payments.** Mr. Whyatt is in discussions with their attorney; approximately \$275,000+ is due to the City by year end. Property is back on the tax rolls for 2012 City. A counter-proposal will most likely be presented. .

**Property Maintenance.** Still under review. West Street parking lot and Westech piece could possibly be included in the BOA application. Mr. Curry requested that Ms. Waivada's review of properties be completed as quickly as possible so that industrial sites can be set aside.

## 9. New Business

**Pierces Road Clean-Up Access (see Attachment C, Notice of Potential Liability).** Mr. Whyatt distributed an outline sketch in the EPA Notice and explained the barrel cache area. As a superfund site, we are precluded from applying for Assessment Grant. Discussion of how these survey lines were arrived at by the engineers. Counsel advised the IDA to approve signing the document which EPA says must be signed.

Access Agreement. Review of the draft agreement and discussion of IDA's requirements (roads, water, utilities, etc.); is O'Brien the engineering firm? When will the survey be done? Language will be added to include results. Mr. Whyatt recommends that the Chair be authorized to sign the Access Agreement when final version is ready. DuPont won't waive its rights.

Mr. Penney: Motion to authorize a survey

Mr. Curry: Motion Seconded, with instructions to flag the eastern boundary for purpose of determining where barrels are on IDA property.

Discussion: Would original surveyor be available and is and RFP required.

Mr. O'Shea: Motion to Table to Motion

Mr. Penney: Motion to Table is Seconded.

**VOTE: Unanimous to Table Motion**

Review of IDA Procurement Policy for Sole Source exceptions in bids.

Mr. Curry: Motion to Waive bidding requirements for a survey of the boundary between the IDA and DPW properties on Pierce's Road, per Articles 6 and 10 of the Procurement Policy.

Mr. Penney: Motion Seconded

**VOTE: Unanimously adopted.**

Mr. Penney: Motion to authorize the Chair to sign the final Access Agreement for IDA Property on Pierces Road upon the advice of counsel.

Mr. Curry: Motion seconded.

Discussion: The City has declared this a Type 2 SEQRA action. Mr. Whyatt recommends that the IDA do the same.

**VOTE: Unanimously approval to authorize the Chair to sign the final Access Agreement.**

Mr. McIver emphasized that the lines need to be clearly delineated before work begins, with photos, so that lines can be referred to when construction is concluded.

**Local Development Corporation ("LDC"):** The IDA informed acting City Manager Herbek that there are LDC records in New Paltz, possibly attorney/client records.

**10. Next IDA Meeting.** The next meeting will take place on Monday, September 19, 2011

**11. Adjournment of Public Meeting to Executive Session to discuss The Foundry and personnel matter.**

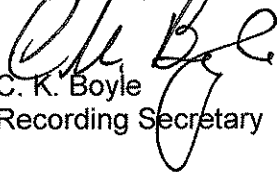
Mr. Curry: Motion to Adjourn to Executive Session for legal advice concerning an Extension of Time for The Foundry.

Mr. Penney: Motion seconded.

**VOTE: Unanimously approved.**

The regular meeting was adjourned at 10:00pm.

Respectfully submitted,

  
C. K. Boyle  
Recording Secretary



**City of Newburgh**  
DEPARTMENT OF PLANNING & DEVELOPMENT  
City Hall - 83 Broadway  
Newburgh, New York 12550

**ATTACHMENT A**

TEL: (845) 569-9400

FAX: (845) 569-9700

August 12, 2011

TO: IDA Board  
FROM: Ian MacDougall  
RE: Grant Opportunities for IDA Properties

The Pierces road property is one of the most talked about properties among the IDA members due to its development potential. Its geographic location with access to a variety of modes of transportation makes it prime for development.

At a recent IDA meeting there was a discussion regarding the differences of EPA verses BOA grants. Fortunately the IDA is an eligible candidate for both programs.

The federal EPA grant program has 5 categories that apply to brownfields. Of the 5 the two that are most appropriate for the IDA are Assessment grants and Cleanup grants. Recent changes to the grant program require a Cleanup Program grant to be preceded by an Assessment Grant. This is to develop an understanding of the degree of contamination for the cleanup process begins.

Assessment grants are limited to \$200,000 per application for hazardous and \$200,000 for petroleum contaminated wastes. Based on recent discussions with the EPA it is beneficial to include more than one site for each application in case the study area is expanded after the grant is awarded.

Assessment grants focus on the testing of environmental sensitive concerns like air quality and ground water quality issues. There is a 20% match required by the applicant, some of which can be credited by use of in-kind services. Upon the completion of the site assessment the IDA could apply for a Cleanup grant or Revolving Loan Fund for a \$1,000,000. Depending on circumstances additional money could be available.

Another source of funding is the New York State Brownfield Opportunity Area (BOA) program. Currently, there is an active BOA by the Newburgh Community Action Committee (NCAC) in the second stage of the program which includes the IDA property. The NCAC is developing a future land use plan that includes potential uses for the IDA property. The future land uses were identified in their April presentation to the IDA. The goal and interests of the NCAC plan may not echo the goals and interests of the IDA and therefore the IDA needs to play an active in the outcome of NCAC plan.

# ATTACHMENT A

## Pg. 2

Pg. 2  
8/12/11

Pursuant to the policies of the program either party can apply for funding under Phase III of the program. Staff feels strongly that the IDA should take the lead on future investigations of the IDA property provided by Phase III of the BOA. There is a significant benefit in controlling the future process.

Eligible tasks under Phase III of the BOA program include:

- Refine the intended uses of the properties in the study area
- Conduct infrastructure studies to determine facilities' needed for redevelopment
- Acquisition due diligence
- Environmental site assessment
- Demand and feasibility analysis
- Conceptual Design
- Conduct SEQRA activities leading to a shovel ready site and
- Site marketing at a regional and national scale.

In summary staff recommends: (a) influence the outcome of the NCAC project by playing a more active role in development of their final plan (b) submit an application for Phase III of the BOA grant program (c) submit an application for an EPA Assessment grant. The suggested course of action will expedite returning the property to a productive reuse.

# ATTACHMENT B

Treasurers Report

8/15/2011

Operating Account                      May include some estimated figures  
Opening Balance                        7/11/2011

\$395,276.82

<u>Check #</u>	<u>Voucher #</u>	<u>Check Date</u>	<u>Invoice</u>	<u>Amount (\$)</u>	<u>Remark</u>	<u>Account</u>	<u>Payee</u>
2613	110801	8/15/2011			\$261.25 Services Rendered for Consulting		On The Money Bookkeeping, Inc.
2614	110802	8/15/2011			\$287.49 Services rendered for recording & office supplies		C. Kippy Boyle
2615	110803	8/15/2011			\$6,600.00 Legal Services		Oxman Tufts

Deposit List

<u>PAYOR</u>	<u>Amount</u>
Sprint	\$ 2,386.59
T-Mobile	\$ 1,487.27
Metro PCS	\$ 1,440.00
	\$7,148.74

<u>Operating Account</u>	<u>Amount</u>
<u>Closing Balance</u>	\$393,441.94
Checks from prior month	\$ (37,647.59)
Balance as of 08/15/11	<u>\$355,794.35</u>

LNA Principal                      7/31/2011                      \$ -

M Curry  
Treasurer  
City of Newburgh IDA Board



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

AUG 11 2011

City of Newburgh Industrial Development Agency  
Newburgh City Hall  
83 Broadway  
Newburgh, NY 12550  
Attn: Edward Lynch, Administrative Director

Re: Newburgh Landfill Superfund Site ("Site"), City of Newburgh, Orange County, New York

Dear Mr. Lynch:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq. (also known as the "Superfund" law). More information about CERCLA, including a copy of the Superfund law, may be found at [www.epa.gov/superfund/](http://www.epa.gov/superfund/).

As discussed below, based on information presently available to EPA, EPA has determined that the City of Newburgh Industrial Development Agency ("IDA") owns part of the Newburgh Landfill Superfund Site ("Site") and may be responsible under CERCLA for cleanup of the Site and costs EPA has incurred or may incur in addressing the release or threatened release at the Site.

At the request of the New York State Department of Environmental Conservation ("NYSDEC"), EPA has investigated conditions at an area of buried drums on the western border of the Site, an approximately 30-acre site in the City of Newburgh, bordered on the west by the DuPont - Stauffer Landfill Site, a site listed on the New York State Registry of Inactive Hazardous Waste Disposal Sites, to the south by Pierces Road, to the north by Interstate 84, and to the east by residential, commercial, and light industrial buildings. As a result of these investigations, EPA has documented the release and threatened release of hazardous substances into the environment at the Site. EPA has spent, and will continue to spend, public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. These actions have been and will be taken by EPA pursuant to CERCLA.

The Site was operated by the City of Newburgh ("City") as a municipal landfill from the late 1940s until 1976. According to information made available to EPA, in addition to municipal waste, the City also accepted drums of materials containing hazardous substances from, inter alia, E.I DuPont de Nemours & Company ("DuPont") and Stauffer Chemical Company ("Stauffer"). During the course of operation of the landfill at the Site, drums of waste materials



containing hazardous substances came to be located at the western edge of the landfill, adjacent to the boundary of the DuPont-Stauffer landfill, in an area known as the "Drum Cache Area" and generally depicted on the map attached hereto as Attachment A.

EPA conducted a Site visit on November 23, 2009 and, after evaluating the data collected to date, determined that the drums and other containers at the Drum Cache Area are eligible for a removal action. In September of 2010, EPA entered into Administrative Settlement Agreement and Order on Consent Index Number CERCLA-02-2010-2029, with DuPont and Bayer CropScience, Inc. ("Bayer") (successor in interest to Stauffer) to perform a removal of the drums and other containers at the Drum Cache Area.

During May of 2011, it came to the attention of the City, DuPont, Bayer, and EPA, that a portion of the Drum Cache Area, designated as tax parcel # 1-1-6, as shown on the tax map of the City of Newburgh, is owned by the IDA and has been owned by the IDA since 1984.

### NOTICE OF POTENTIAL LIABILITY

Under CERCLA and other laws, responsible parties may be held liable for monies expended by the federal government in taking response actions at and around sites where hazardous substances have been released, including investigative, planning, removal, remedial, and enforcement actions. Responsible parties also may be subject to orders requiring them to take response actions themselves. Responsible parties under CERCLA include, among others, the current and past owners or operators of a facility from which there has been a release or threatened release of a hazardous substance, persons who transported hazardous substances to the facility and those that generated the hazardous substances that were sent to the facility.

By this letter, we notify the IDA that we have reason to believe that the IDA is the current owner of a portion of the Drum Cache Area which comprises a portion of the Site. Accordingly, the IDA is considered to be a potentially responsible party with respect to the Site, pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

If you have any questions regarding this matter, you may contact or have your attorney contact Carol Berns of our Office of Regional Counsel at 212-637-3177.

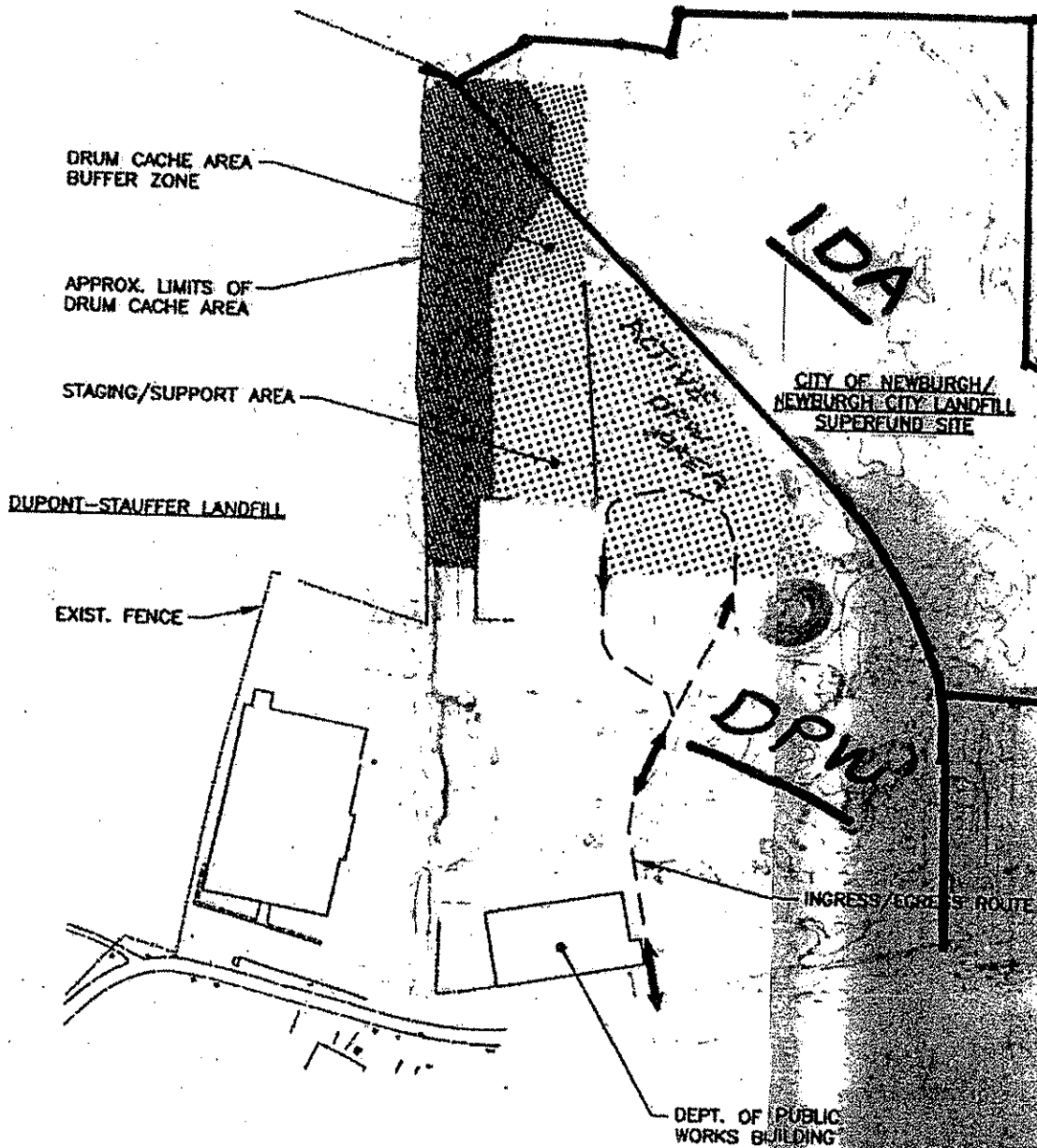
Thank you for your attention to this matter.

Sincerely yours,



Walter Mugdan, Director  
Emergency and Remedial Response Division

cc: Thomas Whyatt, Esq., Counsel for IDA  
John Greenthal, Esq.  
Steven Rahaim, Esq.  
Meave Tooher, Esq.



**NOTES:**

1. ACCESS IS REQUIRED TO THE F  
DEPICTED ON THIS FIGURE:
  - INGRESS/EGRESS ROUTE
  - DRUM CACHE AREA
  - DRUM CACHE AREA BUFFER
  - STAGING/SUPPORT AREA
2. IN ADDITION TO PROVIDING ACC  
AREAS SHOWN, THE CITY OF N  
DESIGNATE AREAS OUTSIDE THE  
BUFFER, AND STAGING/SUPPORT  
(CONTRACTOR WORK AREAS) F  
CONTRACTOR TO STOCKPILE/SI  
REMAIN ON SITE INCLUDING CU  
BRUSH/WOOD CHIPS, NON-HAZ  
NOT SUITABLE FOR PLACEMENT  
EXCAVATION (E.G. WASTE TIRES  
NON-HAZARDOUS LIQUID WASTE  
APPLIANCES WITH REFRIGERANT  
PHASE ACM).
3. CITY OF NEWBURGH TO DESIGN  
OUTSIDE OF CONTRACTOR WORK  
STAGING/STOCKPILING CLEAN F  
AND COVER AFTER THE EXCAVA  
BACKFILLED WITH NON-HAZARD  
REMOVED AND SUITABLE TO BE  
THE EXCAVATION.
4. ACCESS TO AREAS NORTH OF  
AREA AND EAST OF BUFFER IS  
NECESSARY, BUT IS NOT PRES  
ANTICIPATED: