

**CITY OF NEWBURGH  
INDUSTRIAL DEVELOPMENT AGENCY ("IDA")  
MINUTES OF MEETING  
September 19, 2011**

**Present**

Board Members: Richard Bedrosian, Vice Chair  
Michael Curry  
John Penney  
Jerry Maldonado

Excused Absence: Josh Smith, Sean O'Shea, Spencer Gulliver  
Counsel: Thomas Whyatt, Esq.

In Attendance: Theresa Waivada, Certification Consultant  
Craig Skelly, Chief Financial Officer  
Ian MacDougall, City Planner  
Jim McIver, CT Male Engineers  
The Foundry Condominium Board (Roy Spells  
and members of the Board

**Roll Call.** Mr. Bedrosian called the meeting to order at 7:30pm; a quorum was present.

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

2. **Approval of Minutes of August 15 Monthly Meeting**

Mr. Curry: Motion to Approve the August 15 Minutes.  
Mr. Penney: Motion Seconded  
Vote: Unanimously adopted.

3. **Bills and Communications.** Copies of all communications are attached to each member's meeting package.

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

5. **Report from Compliance Consultant:**

Bourne & Kenney bond project from 1999 is in receivership. Related Companies is the new manager.

BNY Mellon is researching its archives for defeasement information on Atlas Textiles. Executed copies of project closure documents haven't been found or Minutes approving such. Auditor needs proof that it has been closed.

ABO and Comptroller's Office are understanding of this current Board's activities in recreating past years. The notice letters are sent out automatically.

Discussion of the new Regional Economic Development Council. -- Ms. Waivada will attend the next Regional Council meeting in Goshen. Mr. Maldonado: The city needs to be engaged more systematically in these discussions. Mr. McDougall will clarify with the acting city manager. Dual representation makes sense to ensure Newburgh's presence. Ms. Johnston of Newburgh Advocate gave meeting details to the Board.

## 6. Reports of Committees

**Audit Committee:** Mr. Curry reported that the auditors are still awaiting Bond Trustee responses for the 2009 Audit. Mr. Whyatt asked whether a draft is available now to at least begin review. Ms. Waivada said yes, and Mr. Curry will review and distribute. Some of the 2010 Audit information has already been gathered.

**Governance Committee:** Mr. Maldonado asked to be relieved of Chair duties, due to a heavy work schedule. Ms. Waivada asked if he would continue on, as she will be responsible for the annual review of governance policies and by-laws, which would then be presented to the Committee. Mr. Maldonado agreed that this reorganization would enable him to remain as Chair.

**Treasurer's Report and Bills & Communications:** Mr. Curry distributed the monthly report (see Attachment A). The balance as of September 19, 2011 is \$345,687.49. Seven invoices were presented for payment.

Mr. Penney: Motion to pay 7 invoices as presented and draft checks as indicated.  
Mr. Curry: Motion seconded.  
VOTE: Unanimously approved.

## 7. Old Business.

**BOA Grant – Report from City Planner & C.T. Male.** Mr. MacDougall distributed a map ( See Attachment B). He conducted a conference call with Mr. McIver, NCAC and their consultant. Mr. Maldonado requested a written record of those discussions. NCAC intends to nominate only two properties. The IDA is the 3<sup>rd</sup> largest and runs the risk of not being considered. Mr. MacDougall emphasized the need for City and IDA to be engaged in the process before the State approves the implementation grant. Mr. McIver says the analysis doesn't include infrastructures, relationships to highways. The Grant due date has been postponed from September 29 until March, 2012, which gives the IDA and the City more time to study and comment. However, it will be more competitive. Mr. MacDougall proposes that the NCAC, City and IDA jointly make the application. Mr. Whyatt suggested that DuPont be contacted, since they own the largest portion. Per the Board's request, Mr. MacDougall will draft a letter to NCAC for the Chair's signature requesting a seat on the committee.

**The Foundry** – Mr. Bedrosian noted that this discussion is scheduled for Executive Session. President of the Foundry Board, Mr. Spells, wished to have his Board apprised of negotiations. Mr. Whyatt said that any decisions will be made in a public session. Mr. Curry: the IDA has an extension with FDG through September 30, 2011. There are no further extensions to date. If, after an executive session, the Board wishes to take an action this evening, that is a possibility that the public should be aware of. Mr. Whyatt offered to call Mr. Spells in the morning, if any action were taken. Mr. Bedrosian recommends that the Foundry Board ask to be on the agenda for the next meetings. Mr. Spells gave his phone number to Mr. Whyatt.

**Cell Tower:** Mr. Whyatt reviewed the lease from City to IDA. There is nothing in the lease or the subleases about taxes; research continues as to why the property is back on the tax rolls. The City uses the tower for fire and police communications, as a consideration. Mr. Whyatt suggests beginning with the Assessor's department as to the assessment history. Mr. Maldonado asked what the amount of back taxes are. Mr. Curry will check the amount. There are no records of tax bills until last year.

**Corwin Court Pilot Payments.** By signed agreement, they owe \$275,000 in back PILOT payments to the City and \$2000 to IDA for legal expenses. Mr. Whyatt suggests that they have until December 31, 2011 to pay.

**Murphy's Ditch:** Mr. Whyatt received the signed Easement Agreement, with a copy of the first payment of \$45,000. Mr. Smith, as Chairman, can sign easement and associated attachments. Recording papers for the Deed need to be signed. Recording fees will be paid by purchaser. Then the Certificate of Occupancy is obtained, two more payments of \$55,000 each will be due.

**Property Maintenance.** Still under review. Discussion about including the parking lot and Westech piece 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.

## **8. New Business**

**Pierces Road Clean-Up** Mr. Whyatt recapped the EPA issues for the Board. Mr. Whyatt distributed an outline survey sketch and explained the barrel cache area. Discussion of how the survey lines were arrived at by the engineers. The EPA requires signing the Access Agreement. DuPont won't waive its rights, so the IDA required language to protect its interests, including boundary lines. Negotiations are now down to simple issue. When cleanup reaches the IDA parcel, a mechanism must be in place in the Access Agreement to identify where barrels were removed from, so that IDA is not liable if the barrels are not on its property. Upon completion of the survey, an on-site visit must be conducted with C.T. Male and engineers. IDA will make the case that barrels are not on the property. EPA might rescind the PRP status notice if the survey successfully eliminates the IDA from the barrel cache. Mr. Whyatt has requested that DuPont's engineers correct the survey coordinates.

**C. T. Male Contract Extension:** Mr. McIver explained the four parts of the September 15 proposed contract. 1. On-going NCAC-BOA work. 2. EPA issues – review of documents from engineering report approach. 3. Provide oversight of boundaries during excavation to document that process. 4. Assist in preparation of Assessment Grant. The terms remain the same, scope has been expanded. Time can't be quantified at this time, but expect it to extend for at least six months.

Mr. Curry: Motion to approve proposal and that term of the contract be through the end of December 31, 2012.

Mr. Penney: Motion Seconded.

Discussion: Mr. McIver will send a monthly status report on activities. A minor change was made to the contract and was written in and initialed by Mr. McIver and the Chairman. Mr. Maldonado also requests written summaries of his work to date.

**VOTE: Unanimously approved.**

Mr. Whyatt advised the Board that it would be necessary to waive the bidding requirement. Following are Counsel's comments and advice:

"The IDA at its Monday meeting will be considering an extension of its contract for engineering services with C.T. Male (Jim McIver). I have reviewed the Procurement Policy adopted in September of 2010, which is on the website so I presume it is still current, for the procedures to be followed if the contract is to be approved.

Based on Section 10b of the Policy, the IDA may waive competitive bidding requirements as to this contract, should it choose to do so, by adopting a Resolution to that effect. I believe such a waiver would be appropriate in this case.

One of the exceptions to the bidding requirements is the "Sole Source" exception (Section 10c), which permits waiver of bidding requirements when "there is only one possible source from which to procure the goods and/or services and it is shown that the item needed has unique benefits, the cost is reasonable for the product offered and there is no competition available."

Where a proposed contract is simply a continuation of existing, on-going services, waiver of competitive bidding is appropriate.

C. T. Male qualifies as a "Sole Source" provider because, as the current contractor already providing the services outlined in the contract, it has unique knowledge of the issues and circumstances involved in the issues to be addressed: continued participation in current and crucial negotiations with the EPA on the Scobie Drive parcel, and with NCAC on the BOA issues involving the Scobie Drive parcel; continued participation in the BOA grant process involving the Scobie Drive parcel; and preparation of the EPA Assessment Grant application for cleanup of the Scobie Drive parcel, which is due at the end of October. No other engineering consultant has C.T. Male's unique knowledge and experience because none other has handled these matters for the IDA.

Furthermore, the delay entailed in seeking bids and attempting to retain and bring a new consultant up to speed would prevent the IDA from proceeding timely on these matters, which would be highly detrimental to the Agency's ability to meet its fiduciary obligations as to protection and development of its Scobie Drive property."

Mr. Curry: Motion to waive bidding requirements per Articles 6 and 10 of the Procurement Policy and to deem C.T. Male as a 'sole source' for additional work related to the Scobie Drive site, based on past history and need for immediate continuity of service.

Mr. Penney: Motion Seconded

**VOTE: Unanimously adopted.**

**9. Ms. Waivada Service Proposal.** The Board reviewed a proposal submitted by Ms. Waivada to serve as the Agency's Executive director/CEO until December 31, 2011

Mr. Penney: Motion to approve

Mr. Curry: Motion Seconded:

Discussion: Mr. Maldonado asked if the Board is fulfilling its certification requirements. He was advised that the 2010 audit and report must be completed prior to certification and that staff is targeting completion by December. The \$3000 monthly fee is hourly, not a retainer. Mr. Bedrosian asked about reports to the State and was advised that the Audit Committee will issue an RFP for the 2012 audit so that the Agency can comply with the March 31, 2012 submission date.

**VOTE: Unanimously approved.**

**10. Adoption of 5-year budget.** Ms. Waivada explained the budget reporting required by the ABO. The budget before the Agency includes actual expenditures for 2010 and estimates for 2011 through 2014. If approved, it will be submitted to the ABO before the end of the month.

Mr. Penney: Motion to adopt the 5-year budget

Mr. Maldonado: Motion Seconded.

Discussion none

**VOTE: Unanimously adopted.**

11. Next IDA Meeting. The next meeting will take place on Monday, October 17, 2011

12. Adjournment of Public Meeting to Executive Session to discuss a property matter and to obtain legal advice.

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

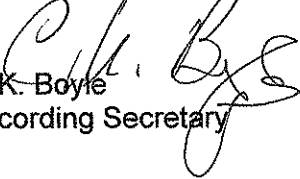
Mr. Penney: Motion seconded.

**VOTE: Unanimously approved.**

The regular meeting was adjourned at 9:35 pm.

No further actions arose from the Executive Committee.

Respectfully submitted,

  
C. K. Boyle  
Recording Secretary

# ATTACHMENT A

Treasurers Report

9/19/2011

May include some estimated figures

Operating Account  
Opening Balance

8/1/12011                      \$    364,981.09

<u>Check #</u>	<u>Voucher #</u>	<u>Check Dat</u>	<u>Invoice</u>	<u>Amount (\$)</u>	<u>Remark</u>	<u>Account</u>	<u>Payee</u>
2616	110901	9/19/2011		\$551.38	Services rendered for recording & office supplies		C. Kippy Boyle
2617	110902	9/19/2011		\$19.36	Office Supplies		Charles Merrill Office Supplies
2618	110903	9/19/2011		\$375.00	Title Search		Darlene McEachern-Tvelt
2619	110904	9/19/2011		\$4,360.00	Survey & Flagging		KC Engineering
2620	110905	9/19/2011		\$367.50	Services Rendered for Consulting		On The Money Bookkeeping, Inc.
2621	110906	9/19/2011		\$14,300.00	Legal Services		Oxman, Tullis
2622	110907	9/19/2011		\$5,437.00	Compliance Services		Theresa Waivada

\$25,410.24

Deposit List

<u>Pavor</u>	<u>Amount</u>
Sprint	\$ 2,388.98
T-Mobile	\$ 11,174.00
Metro PCS	\$ 1,490.40

Operating Account  
Closing Balance

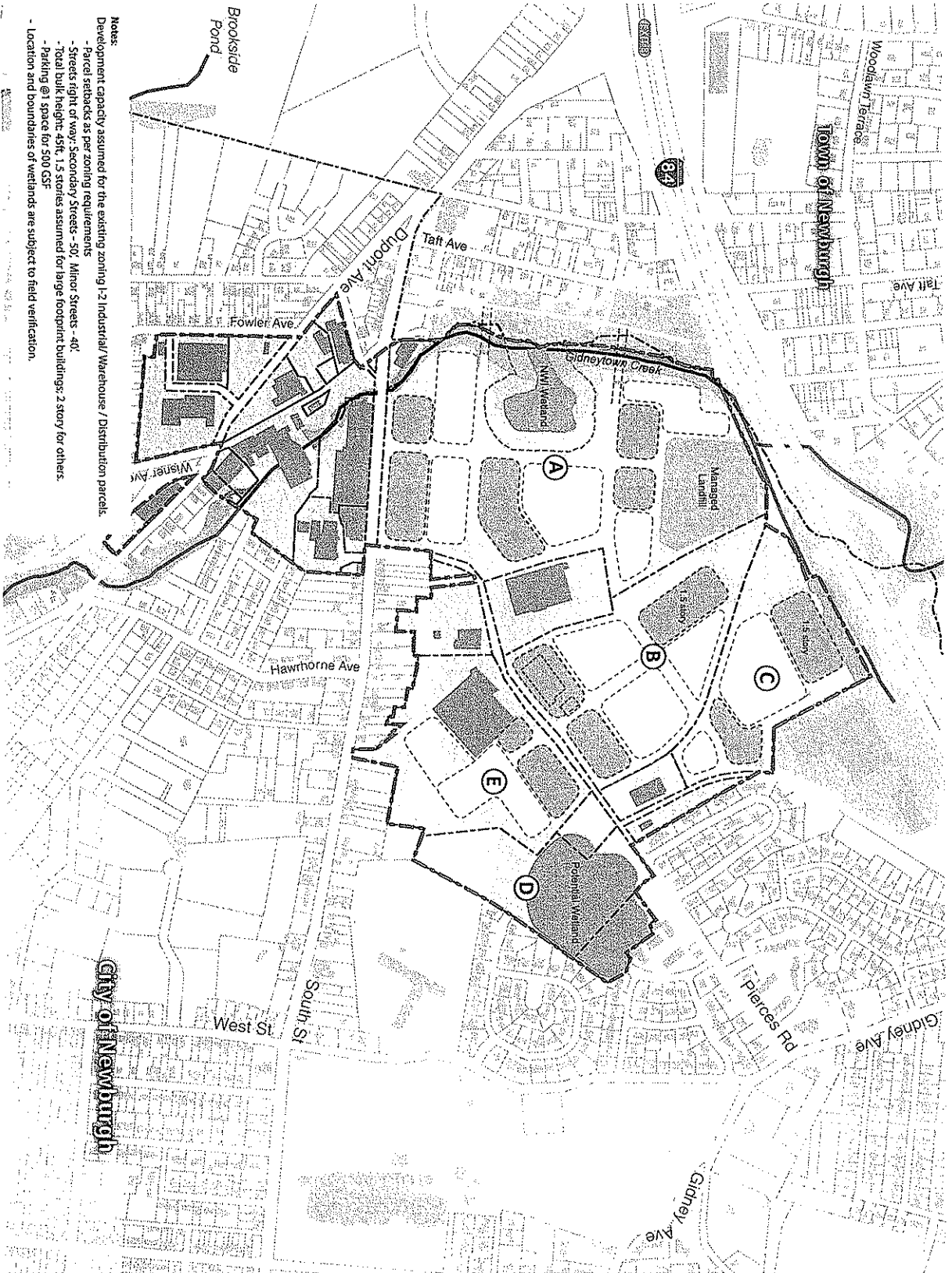
Checks from prior month  
Balance as of 09/19/11

	\$ 354,624.23
	\$ (8,936.74)
	\$ 345,687.49

Total                      \$15,053.38

LNA Pincipal                      8/31/2011                      \$ -

M Curry  
Treasurer  
City of Newburgh IDA Board



**Notes:**  
 Development capacity assumed for the existing zoning 1-2 Industrial/Warehouse / Distribution parcels.  
 - Parcel setbacks as per zoning requirements  
 - Streets right of way: Secondary Streets - 50', Minor Streets - 40'  
 - Total bulk height: 45ft, 1.5 stories assumed for large footprint buildings; 2 story for others.  
 - Parking @ 1 space for 500 GSF  
 - Location and boundaries of wetlands are subject to field verification.

**Development Capacity**

- Ⓐ Dupont Stauffer Parcel
  - Parcel Area - 49.1 acres (100%)
  - Building Footprint - 8.7 acres (17.7% of the area)
  - Building Total - 754,398 GSF
  - Streets - 4.9 acres (10.0%)
  - Parking - 13.4 acres (27.3%)
  - Open Space - 1,593 spaces
  - Recreational - 17.3 acres (35.2%)
  - Managed Landfill - 9.3 acres
  - Wetland - 2.4 acres

- Ⓑ City of Newburgh DPW Parcel
  - Parcel Area - 21.6 acres (100%)
  - Building Footprint - 5.0 acres (27.8% of the area)
  - Building Total - 469,605 GSF
  - Streets - 2.4 acres (11.1%)
  - Parking - 8.3 acres (38.4%)
  - Open Space - 953 spaces
  - Recreational - 0.8 acres (3.5%)
  - Wetland - 0.8 acres

- Ⓒ Newburgh IGA Parcel
  - Parcel Area - 11.5 acres (100%)
  - Building Footprint - 3.9 acres (35.0% of the area)
  - Building Total - 283,403 GSF
  - Streets - 1.6 acres (14.0%)
  - Parking - 4.9 acres (43.4%)
  - Open Space - 556 spaces
  - Recreational - 1.4 acres (12.5%)

- Ⓓ City of Newburgh Parents (6 Parcels)
  - Parcel Area - 14.3 acres (100%)
  - Open Space - 14.3 acres (100%)
  - Potential Wetland - 7.6 acres
  - Recreational - 6.6 acres

- Ⓔ Newburgh Metals Parcel
  - Parcel Area - 11.7 acres (100%)
  - Building Footprint - 2.4 acres (21.3% of the area)
  - Building Total - 1,912,028 GSF
  - Streets - 0.27 acres (2.3%)
  - Parking - 1.3 acres (11.6%)
  - Open Space - 382 spaces
  - Recreational - 1.3 acres

- Total Development Capacity (7 Parcels)**
- Total Site Area - 118.1 acres (100%)
  - Total Buildings Footprint - 20.9 acres (17.7% of total site area)
  - Total Buildings - 1,698,797 GSF
  - Streets - 9.1 acres (7.7%)
  - Parking - 29.9 acres (25.3%)
  - Total Parking Spaces - 3,424 spaces
  - Open Space - 34.9 acres (29.5%)
  - Recreational - 1.3 acres

**Legend**

- Buildings
- Parking
- Open Space

Scale: 0 50 100 150 feet

Wallace Roberts & Todd

*Sheila's  
 Mark's  
 Ryan's*