

Minutes

Buffalo Fiscal Stability Authority

April 21, 2004

A meeting of the Buffalo Fiscal Stability Authority (“BFSA”) convened at 1:04 p.m. in Room 106 of the Buffalo Convention Center in Buffalo, New York. The Meeting was convened by a Notice of Meeting sent to the Directors by Chair Baker and announced to the public and press.

Directors Present: Baker, Masiello, Stenhouse, Tobe, Townsend and Wilmers

Directors Arriving Late: Giambra and Faso

Directors Present Via Conference Phone: None

Directors Absent: McCall

Staff Present: Johnson, McPherson, Mitchell, Santos, Stefko and Tocker

Others Present: None

Opening Statement

Chair Baker welcomed those present at the Convention Center, noted the emergency evacuation information and announced the roll call of Directors. He mentioned that the significant issues that will be discussed at today’s meeting include:

- The projected City gap for 04-05 and out years, and the opportunities for closing those gaps
- The Capital Plan as approved and how it corresponds to the Comptroller’s proposed borrowing.
- BFSA’s debt issuance, which is part of the plan to close the City’s current-year gap.
- School District’s four-year Financial Plan,
- And an update on other covered organizations

Baker expected this to be a very interesting meeting that will provide the Board with a good background on many issues that we’ll need to understand in order to evaluate the City’s Financial Plan that will be published in less than two weeks.

Approve Minutes

The Directors voted to approve Resolution 04-31 to approve the minutes of the meeting of March 10, 2004 and to ratify resolutions numbered 04-24 through 04-30.

Motion by Stenhouse, second by Wilmers. Vote 7-0.

City Issues

2003-04 Budget Modifications

Johnson spoke on the two 2003-04 budget modifications submitted by the Mayor.

1. Certification of \$1.8 million in additional sales tax revenues. Executive Director Johnson stated that on the revenue side the City predicts that they will receive \$1.8 million in sales tax this fiscal year over the budgeted amount and
2. Authorization to allow for the retention of firefighters, as opposed to laying them off as called for in the adopted financial plan. Johnson stated that the layoffs were part of the City's program to eliminate the gap but now finds that the action would not save but would cost an additional \$18,000 in the current fiscal year.

Mayor Masiello motioned to approve resolution 04-32 certifying additional revenue and withholding the firefighter layoffs, second by Giambra. Vote 8-0.

2004-05 Baseline Gap & PEG Initiatives

Commissioner of Administration & Finance, James B. Milroy noted that gap numbers were discussed with staff the prior week and that the gap for fiscal year 04-05 is projected to be about \$49 million growing to \$81 million in the last year of the plan 07-08. He attributed this growth to the increasing costs of healthcare and pension. In addition the county consolidations that have fallen out of the plan are driving up the gaps. Other consolidation efforts are still being considered. The gap's growth year to year can be attributed to conservative revenue estimates and higher expense estimates. The Act avails the City to bond out 55% of the 04-05 gap leaving the City to close the remaining amount. Two large initiatives to close the are the parks consolidation with General Fund savings estimated to be \$5.2 million and the single provider health coverage valued at \$7 million in savings, closing nearly 30% of the entire gap. Director Tobe asked that Milroy to provide an update with regard to the program to eliminate the gap that is planned for savings starting July 1 next fiscal year. Milroy stated that the Parks merger is in discussion at the State level; he then deferred to Commissioner Leonard Matarese for an update in regards to the one health insurance carrier initiative, but stated that the unions have not signed onto the concept. He mentioned that if these 'no brainers' don't occur, draconian cuts would have to replace their savings. L. Matarese updated the BFSA Board on both of the initiatives, as follows: the Parks merger is coming together and he stated that union was 'not appalled' with the offer; he also stated that if a negotiated agreement occurs, then timing of the State action won't impede the City's assumption of savings starting in July. According to Matarese, the Health initiative is more complex: not only do all the unions have to participate and agree on one carrier but so do each individual retirees (2,700+). In addition he suspects that to gain union support each contract would have to be renegotiated and that givebacks would be expected. Director Tobe noted that these collective bargaining agreements would have to come before the Authority for review and action, adding time before the savings could be realized. County Executive Giambra and Mayor Maisello echoed the Board's support for such actions to take place; the collaborations could have a positive impact upon the community by bringing better services at a reduced cost.

Director Tobe asked J. Milroy and L. Matarese to comment on the recent arbitrator grievance decision and its projected impact. Milroy stated that the City would have to pay the difference between what members of Local 264 had actually earned and what they would have earned had they not been laid off; the cost would total \$194,000 in the current year and add just under \$600,000 to next year's gap. A total of 18 employees are affected. The City plans to appeal the decision immediately. Matarese added that this is an example where the Mayor and the City did everything right, temporarily suspending layoffs in exchange for renegotiating health insurance.

Director Faso asked if the City had noticed a reduction in service as a result of the previous layoffs. Milroy responded that the employees were mostly bridge engineers and that seasonal employees cover their work.

Faso, focusing on the health insurance proposal relating to retirees, suggested that the City look into the State's EPIC program, which could offset the city's costs. Matarese stated that the City will look into the federal and State programs available for the 2,700 plus retirees; 240 of whom are living in Florida. Matarese concluded that retiree benefits had been negotiated under a prior administration and reflect a variety of benefits based upon date of retirement. He hopes that retirees are willing to negotiate new agreements to ensure continuation of dependents' coverage should the retiree predecease the dependent – something not currently provided for.

Licensing and Permitting Reform

Chair Baker stated that the parties working on this will be having a meeting tomorrow and that he will expect to hear significant progress has been made by the time of the next Authority Board meeting. Director Wilmers expressed concern over the length of time it has taken to resolve this issue, especially since it is a matter of economic development.

City/County Working Group

Director Baker mentioned that County Executive Giambra and Mayor Masiello, and their respective staffs, have been working diligently toward resolving all issue relating to the Parks' initiative, and that he and hopes that this is completed as soon as possible.

Hiring Freeze Waivers

Johnson reported that the Mayor had requested eighty-one hiring freeze waivers, which fell into three (3) categories:

- ❖ Police: 9 requests, 5 changing current employees status and 4 to meet the operational goals of the contract. Funds to cover the positions are in the current budget.
- ❖ Public Works: requests for 71 employee waivers, 16 to curtail overtime, and 55 new seasonal pool relating employees which are also revenue generating.
- ❖ Law Department: request for 1 attorney position, with funds to cover the position in the current budget.

BFSA Staff recommended approval, since sufficient funds exist in the budget.

Directors voted to approve resolution 04-33 authorizing the 81 hiring freeze waiver requests. Motion by Baker; second by Tobe. Vote 8-0.

- ❖ City Comptroller requests 5 waivers

Johnson reported that the City Comptroller SanFilippo requested 5 waivers to fill vacancies in the Department of Audit and Control. Chair Baker motioned to approve the positions pending BFSA review of the candidates' resumes. Director Tobe asked the Comptroller to adjust the special assistant's job description.

Directors voted to approve resolution 04-34 authorizing the 5 hiring freeze waiver requests. Motion by Baker; second by Giambra. Vote 8-0.

School Issues

□ Budget

Johnson indicated that BFSA is expecting 03-04 Budget modifications to be presented at the next meeting. She added that it was unfortunate the School District had not supplied BFSA staff with any information about the financial plan that is due on May 3rd.

James Kane stated that the District would be meeting with BFSA staff the following day, after presenting budget modifications to the Board of Education. He noted that the District was also exploring opportunities for health insurance savings by working with a firm the County used to achieve savings, and that four insurance carriers have identified approximately \$2 million in savings for the District. Kane indicated that the District's plan anticipates that its 417.7 million 04-05 deficit would be filled through additional State aid rather than BFSA borrowing. He said that State Legislators have indicated there would be an increase in aid for education. However, he added that teachers and District administrators get lifetime health insurance and are entitled to cosmetic surgery through its health insurance plan.

Johnson noted that, in her opinion, it was very unfortunate that the Buffalo Schools tried to build their financial plan without the input or assistance of BFSA staff. She stated that letters had been sent to both the Mayor and Superintendent Canedo in which speculative revenues were ruled out. In formula driven aid last year, the District had in fact received less than the prior year. While BFSA staff has been unable to get information from the District's Finance Department over the past two weeks, BFSA staff had been working on information previously received on enrollment, attendance and facilities, which will be important to analysis of the District's budgetary needs.

Chairman Baker expressed concern over the declining enrollment numbers; the number of employees outside the classroom and the reconstructions occurring while the District includes plans for closing 14 schools.

□ CFO Search

Superintendent Marion Canedo stated that the Buffalo Public Schools (BPS) has found a CFO and plan to announce his name at the Board of Education meeting, scheduled for that evening. She mentioned that the BPS has had a lot of help with the selection process and evaluating the candidates. She indicated that employment would begin on May 3rd. BFSA directors then expressed their delight that this CFO search has been resolved.

Other Covered Organizations

□ Buffalo Urban Renewal Agency (BURA)

Johnson reported that BURA had completed the employee related actions outlined in their Approved Financial Plan.

Tim Wanamaker stated that BURA had completed its policy memorandum on management practices for the \$5 million HOME Grant and submitted it to HUD. He anticipates that the funds will be available by the end of the fiscal year. A copy of this memorandum is being forwarded to the BFSA offices for review.

BFSA will review the Community Development Block Grant budget portion of BURA's budget with their submitted Financial Plan.

BURA will soon issue advertise for two CPA positions, as included in its Financial Plan. Office of Strategic Planning Director Wanamaker noted that there were two additional titles that have yet to be hired: community Planner and HOME Program director.

Johnson stated that at BFSA's January 21st meeting, BFSA adopted Resolution 04-07, which designated a series of entities "covered organizations" within the meaning of the BFSA Act, granting some of them exemptions where they do not currently materially affect the ability of the City to adopt and maintain a budget. BFSA has begun meeting with these entities to discuss their responsibilities as covered organizations.

❑ **Joint Schools Construction Board (JSCB)**

The Joint Schools Construction Board is a non-exempt covered organization per the BFSA Act and Resolution 04-07. JSCB was explicitly named as a covered organization in the BFSA Act; however its initial bond sale was exempted from BFSA approval.

BFSA met with Lou Ciminelli and Mike Laipple of Ciminelli Group to review the status its role relative to JSCB. BFSA staff is now in the process of reviewing the JSCB strategic plan using enrollment projections prepared by Hillier Associates. A second meeting with the Ciminelli group will be scheduled once the review is complete.

BFSA will bring the JSCB under full covered organization status (per the BFSA Act) beginning with the new financial plan in May.

❑ **Other Information Related to Covered Organizations**

To facilitate the Authority's review of the City's 2004-05 budget pursuant to the BFSA Act, and to update the exempt status of these entities, BFSA has requested the following documents, to the extent that they are available from the Buffalo Sewer Authority, Buffalo Water Board, and the Buffalo Municipal Water Finance Authority:

- Independently audited financial statement for FYE 2002 and 2003;
- Proposed and current operating budgets (as well as any available multi-year financial or capital plans); and
- Any other financial- or capital-related reporting completed in the past two fiscal years.

BFSA anticipates receiving these documents on May 3, 2004 from the Mayor, as a part of the City's comprehensive financial plan.

From the Buffalo Sewer Authority (BSA) BFSA has received and is currently reviewing the following: 2002-03 & 2003-04 Budgets, 2002-03 sewer rents, recent debt issue (Sept 03) and their 2002-03 Annual Report.

Wage Freeze

Chair Baker explained that the next item on the agenda was a culmination from what the Board had been presented throughout the Board meeting. He stated that the City is facing a gap next year that is \$20 million over the \$26 million gap projected in the approved financial plan and that the cumulative gap of the next few years of the financial plan exceeds \$250 million. Vice Chair Townsend indicated that there are few degrees of freedom to present a truly balanced budget for the next fiscal year, and the BFSA had asked that wage increases be removed from the baseline

budget in 2003. Baker introduced Peter Spinelli, as BFSA's labor counsel who spoke on the wage freeze issue. Spinelli noted that the Authority had already imposed a hiring freeze; and that another one of its powers is to impose a wage freeze. The wage freeze resolution in front of the Board follows the statutory authority that allows for a freeze in wages and salaries. The resolution would be effective upon adoption and continue until the Board lifts it or modifies it. The freeze would affect existing contracts and what are commonly referred to as step increments. All salary increases would be frozen in the City and all covered organizations, other than those covered organizations the Board has chosen to exempt.

Mayor Masiello invited Police Commissioner Rocco Diina to speak. Diina expressed concern that a concept of this magnitude was not discussed with his department. The Mayor indicated that the City already negotiated the police contract and was concerned with the quality of service. He asked that the Board be cognizant of the effect that this will have on the health and integrity of the City.

Chair Baker reiterated that this freeze, relative to the Police union would only effect the 3.4% increase scheduled to take effect on July 1, 2004, with savings of over \$2 million, and that this action could help prevent layoffs in other areas.

Johnson clarified that the State provided \$20 million for re-engineering and or cash flow purposes. The Directors then discussed the value of the savings associated with imposing a wage freeze. Director Giambra stated that situation is dire and the Board has no choice but to consider this resolution. Spinelli clarified that the freeze would mean no additional credit (in amounts related to wages that would have accrued, had wages not been frozen) towards the pension system. That said; however the Authority has obligation to evaluate and suspend the freeze when fiscal crisis has past. Tobe remarked that the Board is out of options, in light of the recent arbitration decision and the City's fiscal crisis.

Directors voted to approve resolution 04-35, authorizing a wage freeze. Motion by Townsend; second by Stenhouse. Vote 7-1. Mayor Masiello voted in the negative.

Debt Issuance

Executive Director Johnson first introduced the BFSA Debt Team: Senior Manager, Lehman Brothers (Frank Mahoney); bond counsel, Mintz Levin (Jonathan Ballan) and financial advisor, Public Financial Management (Nancy Winkler). Johnson spoke to their experience and the procurement of their services. Johnson briefly mentioned that BFSA legislative amendments were still in process and that a bill is expected to be ready by the end of the week. Preliminary rating agency presentations have been made in which the BFSA is asking for a AA rating and expects that such a rating will be granted, once the legislative amendments have been adopted (expected by May 7). She indicated that the City's debt rating of Bbb- means significantly higher debt service costs; and a higher BFSA rating could make savings available to the City. Savings could amount to \$0.5 million from a \$25 million borrowing and \$2-\$3 million in cash flow savings. The debt team assured the Board that once the legislation was amended that the transaction could take place quickly and proceeds could be realized in early June.

City's Proposed Financing & Capital Plan Modifications

Johnson mentioned that the BFSA received a letter from the Mayor asking for modifications to the approved \$24.8 million capital plan that was previously approved in December. The proposed bonding added items such as school reconstructions, additional funds for the Jefferson library and bonding of other projects from outstanding bond resolutions dating from 1999. Only portions of three projects from the BFSA approved budget are included in the proposed sale.

Another letter was received from City Comptroller SanFilippo requesting the approval of a bond sale. Commenting on the letters and other documents submitted on behalf of the City, Johnson stated that after some preliminary research, she was troubled by the conflicting information and proposed projects that were presented. She went on to say that many of the project descriptions were missing and incomplete, and that any action would require further review. The projects relating to the \$44 million in unspent bond proceeds should be compared to the current request. Johnson gave an update on the need for the Comptroller to act on BFSA's request for: the City's investment policy, weekly cash flow schedules and the performance relative to the budget. In conclusion Johnson recommended that the Board table the requests at this time.

The Directors voiced their opinions with regard to some of the projects and about what action to take relating to the capital budget and proposed borrowing. Both Directors Townsend and Wilmers indicated that they were not in favor of bonding the costs associated with tree trimming and maintenance.

Chair Baker asked what is the typical practice under a similar situation to Buffalo's where a distressed municipality is placed with a control board from the BFSA debt team. Nancy Winkler stated that typically the oversight authority is structured in a way similar to the BFSA and has a substantial potential for savings and that the municipality would typically exhaust the borrowing capacity granted by the respective authority in order to take advantage of the savings the authority's higher credit rating. She referenced Nassau County, where PFM is financial advisor to the County. While Nassau County continually had access to the credit market it choose instead to avail itself of the resources available to it by the Nassau Interim Finance Authority (NIFA). Nassau County received 3 ratings upgrades during the period NIFA issued debt on the County's behalf.

Mayor Masiello and County Executive Giambra indicated that the BFSA should consider moving on many of the proposed projects in a timely fashion to either comply with planning, timing and construction issues or for health and safety concerns. Comptroller SanFilippo spoke in support for the moving forward with the bond sale, citing that they have a team, a rating and an insurance commitment. He echoed Giambra's comments that time was of the essence and that the market is 'moving away' and costing the City \$250,000 a week through higher interest rate costs. SanFilippo continued asserting his doubt that the BFSA amendments will be done in a timely manner and that the cost savings assumptions are not realistic at this juncture. Mayor Masiello asked that Commissioner of Public Works, Joseph N. Giambra speak to the reality of the timing issues that the City faces. Commissioner Giambra noted that the bonding for the projects typically occurs in the month of February, so the City is already two (2) months behind especially with the Main Street reconstruction and other federally reimbursable projects, which require the cash out now to later be reimbursed from the federal government.

Director Tobe then asked that if a bond sale were to be authorized, but not issued, would the City have enough cash to cover the projects that J. Giambra spoke of. SanFilippo stated that he would prefer not to speculate at this time and would follow up by providing an answer to Executive Director Johnson.

Director Giambra motioned to approve the borrowing and the projects with a caveat that staff meets to determine which projects are necessary at his time and to look at the borrowing schemes available to take timely advantage of the interest rate climate.

Chair Baker motioned to allow the City to move forward with the bond funding relative to the capital requirements subject to the review and evaluation of BFSA Executive Director

Johnson who would work with the City Comptroller's office. Masiello seconded. Vote not taken, as Todd Miles (city bond counsel) interrupted the Board and expressed the distinct need for the Authority's clear approval in moving forward with the bond sale. He added that the City wouldn't want to mail a POS, and then have the BFSA change their minds. Director Giambra interjected with a point of clarification stating that the Board's intent is that they give the go ahead with the issuance pending final review of the projects by either Chair Baker or Executive Director Johnson.

Chair Baker invited J. Ballan to speak; where he expressed that this approval would be for City debt and would not have the opinion of BFSA bond counsel (Mintz), rather with the opinion of the City's bond counsel (Hawkins). Chair Baker then acknowledged that this approval would take the bonding out of any potential savings the BFSA could offer, and restated Director Giambra's point that time is of the essence, in the current best interest of the City. BFSA bond counsel J. Ballan asked that the board reiterate the intention of the resolution to be passed because it would be necessary for the City's bond counsel to render an opinion thereon. Chair Baker stated that the resolution would read that the BFSA has approved the City's ability to bond, for capital purposes, subject to an approval by Johnson of a list of the projects that are to be covered, and the pricing of the bonds. Tobe went on to state that the resolution would likely contain a ceiling to the bond amount, 'in an amount not to exceed that \$22 million, though we expect it to be less.' Directors voted to approve resolution 04-36, authorizing the City to borrow. Motion by Baker, second by Giambra. Vote 7-0.

Director Wilmers had excused himself from the meeting prior to the vote. Director Giambra excused himself after the vote.

City Contracts and Settlements

Directors voted to approve resolution 04-37 affirming approval of one contract.

1. Main Street reconstruction

Motion by Masiello; second by Townsend. Vote 5-0.

Directors voted to approve resolution 04-38 affirming approval of one contract.

1. NOCO Natural Gas contract

Motion by Masiello; second by Tobe. Vote 5-0.

Eva Hassett, Chief of Staff submitted a letter dated April 8, 2004 containing items for BFSA approval;

1.	Service contract with Nature's Way for removal of petroleum tanks	\$63,912
2.	Change order to existing contract on Buffalo Corridor Management Project	\$73,719
3.	Change order to Inner Harbor parking facility project	\$76,532
4.	Change order to Michigan Avenue Bridge project	\$121,285
5.	Citywide tree removal contract with ABC Tree	\$167,942
6.	Repairs to street cuts by Louis Del Prince & Sons	\$280,502
7.	Contract for reconstruction of Grider Street	\$100,000
8.	Receive grant monies for Urban Area Security Initiative	\$1,290,000

Directors voted to approve resolution 04-39 authorizing the eight contracts.

Motion by Masiello; second by Baker. Vote 6-0.

The City also requested approval of the following contracts;

1. Reimbursement to CN Rail for repairs made to Black Rock Swing Bridge \$56,350

Directors voted to approve resolution 04-40 authorizing the one contract.

Motion by Townsend; second by Baker. Vote 6-0.

2. Service contract for HVAC work at North Jefferson Library \$599,500

Directors voted to approve resolution 04-41 authorizing the one contract.

Motion by Baker; second by Townsend. Vote 6-0.

3. Service contract for architectural/engineering work on fire station designs \$134,175

Directors voted to approve resolution 04-42 authorizing the one contract.

Motion by Masiello; second by Townsend. Vote 6-0.

4. Purchase contract for trees for Downtown Tree Planting project \$93,093

Directors voted to approve resolution 04-43 authorizing the one contract.

Motion by Masiello; second by Townsend. Vote 5-0. Chair Baker abstained.

Austin Iheke v. City of Buffalo Settlement \$167,500

Johnson reported that this case involves an individual who was employed by the City of Buffalo for asbestos removal and while working on a ladder slipped and fell. The three causes of liability were (1) no formal contract with the vendor, (2) strict liability for workers injured on respective property and (3) insurance certificate failed to properly identify the city as the direct insurer. Corporation Counsel recommended approval considering the circumstances.

Directors voted to approve resolution 04-44, authorizing payment of the settlement discussed.

Motion by Townsend; second by Faso. Vote 6-0.

Housing Authority Contracts and Settlements

The Authority submitted three contracts for BFSA approval;

1. Electrical Enhancements at select BMHA properties (increase to a contract currently approved for \$256,858.25) \$55,282

2. All State Development for elevator rehabilitation at the Sedita Apartments \$264,800

3. All State Development for installation of hard wired smoke detectors \$3,580,000

Directors voted to approve resolution 04-45 authorizing the contract.

Motion by Masiello; second by Baker. Vote 6-0.

School District Contracts and Settlements

The District submitted for items for BFSA approval;

1. Erie I BOCES training recruiting staff \$102,433

2. Education Innovation Consortium \$125,000

Directors voted to approve resolution 04-46 authorizing the contract.

Motion by Tobe; second by Stenhouse. Vote 5-0.

Urban Renewal Agency Contracts and Settlements

Directors voted to approve resolution 04-47 affirming approval of one contract.

PILOT Agreement This PILOT is between the City (BURA) and the Housing Authority (BMHA) for Phase II (b) HOPE VI Project. The first-year payment is \$14,000, with no annual increase in payments for 15 years. This payment structure is a calculation of the HUD voucher payments multiplied by the number of units (forty units * \$350). This agreement reflects the Comer v. Martinez settlement.

Motion by Masiello; second by Baker. Vote 5-0.

Directors voted to approve resolution 04-48 affirming approval of one contract.

Contract for the Belmont Shelter Corp. to Manage, Implement and Service the City's Housing Rehab Loan Program \$450,000

Motion by Baker; second by Townsend. Vote 5-0.

Other Business

□ **Records Management**

Directors voted to approve resolution 04-49 appointing Robert M. Tocker as Records Management Officer and adoption of Records Retention Schedule pursuant to the Arts and Cultural Affairs Law.

Motion by Tobe; second by Faso. Vote 5-0.

□ **Public Forum**

Directors voted to approve resolution 04-50 authorizing the engagement with the University at Buffalo's Institute for Local Governance and Regional Growth for the Public Forum Leader and Event Coordinator. Motion by Masiello; second by Stenhouse. Vote 5-0.

Meeting adjourned at 5:01 PM.