

Minutes

Buffalo Fiscal Stability Authority

November 17, 2004

A meeting of the Buffalo Financial Stability Authority (“BFSA”) convened at 1:05 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, Faso, Masiello, McCall, Stenhouse, Tobe, Townsend, and Wilmers

Directors Absent: Giambra

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

Opening Statement

Chair Baker announced roll call of Directors, and noted the day’s agenda.

Approve Minutes

The Directors voted to approve Resolution 04-109 to approve the minutes of the October 20, 2004 meeting and to ratify resolutions numbered 04-100 through 04-108. Motion by Wilmers second by Stenhouse. Vote 8-0 to take effect immediately.

RESOLUTION NO. 04-109

APPROVING MINUTES AND RESOLUTIONS FROM OCTOBER 20, 2004

BE IT RESOLVED that, the Buffalo Fiscal Stability Authority approves the minutes of its meeting of October 20, 2004 and ratifies and affirms nine resolutions numbered 04-100 through 04-108 that were approved on October 20, 2004.

Audited Financials for FYE 2004

City

The City’s and Board of Education’s independent auditor, Deloitte and Touche, presented their audit relative to the two entities. Ray D’Agostino, Deloitte and Touche’s managing partner, presented the audits to the BFSA Board.

Executive Director, Dorothy Johnson noted that the Audit was completed much more timely than in previous years, and expressed the expectation that the audited financials would be presented to BFSA within 120 days of the end of the 2004-2005 fiscal year.

- Mr. D’Agostino provided an overview of the financial statements, highlighted a few key issues and attempted to answer questions posed by BFSA Board members. Mr.D’Agostino indicated he could not comment on the fiscal condition of the City, based on the just completed audit.

He mentioned that the Water Board audit is expected to be complete by December 15, 2004.

Board of Education (BOE)

□ Mr. D'Agostino provided an overview of the financial statements. Director Wilmers inquired into the methodology of government accounting. Director Faso questioned the BOE administration about outsourcing the payroll function. Mr. Crosby stated that the BOE has been operating in that capacity cost effectively.

BURA

- The Buffalo Urban Renewal Agency's independent auditor, John Magalen of Conway Porter CPA, PC provided an overview of the financial statements and highlighted a few key figures.

City Issues

Demolition Presentation

Tim Wanamaker, Executive Director of the Office of Strategic Planning provided the Board with a slide presentation entitled Demolition Report. Mr. Wanamaker stated that the City currently owns 473 properties that require demolition, 298 were acquired at City In Rem auction, October 2004, while the remaining 175 were originally in inventory. Wanamaker's presentation indicated the City's Livable Communities Initiative for targeting demolitions, to emphasize: 1) emergency demolition properties; 2) abandoned property adjacent to schools; 3) targeted areas in which vacant parcels and abandoned buildings represent more than 30 percent of the total land mass (5 areas) and the other areas that have 30 percent or greater vacancies within the neighborhoods (9 areas); and 4) those properties which present a significant danger to adjacent occupied buildings.

Mr. Ray McGurn, Commissioner of Permit & Inspection Services, conveyed the bidding and contracting practices of the City relative to demolitions and emergency demolitions. He was questioned repeatedly by Board members relative to the bidding system. McGurn explained that for emergency demolitions, contractors bid on the spot. As for the other demolitions, block bidding is used in confined geographic areas, if possible. McGurn also mentioned that the seven (7) Harmon Street demolition bids ranged from \$51,000 – \$91,000, and indicated that, as they were "Service Orders" they would not be subject to BFSA approval. Directors Tobe and Faso reiterated that all contracts over \$50,000 must come in front of the Authority for approval and BFSA's expectation that these were contracts by any other name, and should be brought before the BFSA Board for consideration. Mr. McGurn was questioned about his previous statement to BFSA Staff in the spring of 2004, regarding the then current inventory of City-owned properties awaiting demolition. He was reported to have claimed 500 properties at that time. The current numbers indicate most of their properties were not acquired until the fall.

1st Quarter Report

Ms. Johnson reported to the Board on the City's first quarter report for the FY 2004-05. She mentioned that the City was in the process of moving to an accrual budgeting basis; however, on a budgetary basis, current year-end projections indicate a \$1.65 million

budget shortfall. This gap is primarily attributable to a lower than anticipated number of retirements in the Police Department. She further noted that the deficit could expand to \$4.55 million above the \$19.054 million in deficit borrowing based on recent information regarding lower than projected sales tax receipts and the new accounting treatment of Refuse and Recycling funds.

Johnson stated that the cost of employee contracts if continued according to the previous rate of annual increases (without the wage freeze in place) would amount to \$22 million in the current year and growing to a figure of \$66 million by the end of FY 2008.

Director Tobe reiterated that the cost to the City if the wage freeze doesn't hold is \$22 million. Tobe referring to the current year stated that in order to balance this cost should the wage freeze not hold, 313 employees would face layoffs.

Legislative Amendment - Wicks Law

Johnson reintroduced Director Faso's idea to exempt the firehouse constructions from the Wicks Law. She explained that the law (Section 101 of the General Municipal Law) currently binds governments to bid certain construction contracts separately which in turn raises the cost of construction projects by 10 – 30 percent. Director Faso stated that it is essential to get after these costly provisions that don't otherwise add any benefit to the taxpayer. Director Townsend mentioned that the State granted New York City the same exemption when it was classified as a distressed municipality.

The Directors voted to approve Resolution 04-110 to propose amendments to State Law to relieve the City of Buffalo from provisions that increase costs for the City. Motion by Townsend second by Faso. Vote 8-0 to take effect immediately

RESOLUTION NO. 04-110

PROPOSE AMENDMENTS TO STATE LAW TO RELIEVE THE CITY OF BUFFALO FROM PROVISIONS OF LAW THAT INCREASE COSTS FOR THE CITY

WHEREAS, the Buffalo Fiscal Stability Authority (BFSA) has been reviewing and analyzing the financial plans submitted by the City of Buffalo and its covered organizations in search of ways to help alleviate the ongoing fiscal crisis; and

WHEREAS, as there are no new revenues available for the City of Buffalo and the BFSA is charged with assisting the City in a manner that does not require additional State aid, one way to help the City of Buffalo is to find ways to help it economize and reduce costs wherever possible; and

WHEREAS, one area where some savings could be achieved in the reduction of construction costs for the City of Buffalo and its covered organizations; and

WHEREAS, Section 101 of the General Municipal Law, more commonly known as the Wicks Law, requires separate specifications for plumbing and gas fitting; steam heating,

hot water heating, ventilating and air conditioning apparatus; and electric wiring and standard illuminating fixtures in public contracts; and

WHEREAS, this requirement causes the cost of public construction projects to be inflated by 10% to 30% over the cost of the same job without the separate bid specifications because each prime contractor includes a mark up in his or her bid; and

WHEREAS, exemptions from the Wicks Law have been granted in the past under certain circumstances, such as when the New York City school district was given an exemption when New York City was in a fiscal crisis; and

WHEREAS, given the City of Buffalo's current circumstance of existing under a State imposed control period and a State-created fiscal stability authority, there can be no doubt that the City could use an exemption from the Wicks Law; and

WHEREAS, the City is planning a major construction effort with the reengineering and construction of new firehouses, which would benefit from a Wicks Law exemption,

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby call for the amendment of the General Municipal Law and the Public Authorities Law in order to provide the City of Buffalo and its covered organizations during the existence of the Buffalo Fiscal Stability Authority with the ability to select one general contractor who is the lowest responsible bidder to oversee a public construction project, with the approval of the Buffalo Fiscal Stability Authority.

City Contracts

The Directors were notified about five contracts previously approved through the interim contract approval process. These contracts were below the threshold requiring full Board approval. The Board passed a motion ratifying the approval of Chairman Baker and Vice Chair Townsend. Motion by Stenhouse second by Townsend. Vote 8-0.

Hiring Freeze Waiver Requests

There were twenty (20) hiring freeze requests granted since the last meeting under the expedited approval process. Chairman Baker and Vice Chair Townsend were informed and approved the requests via e-mail. The positions approved are listed below.

1. Public Works	Truck Driver (Streets) (5)	\$27,646
2. Public Works	Equipment Operator	\$28,179
3. Fire	Administrative Assistant (2)	\$33,545-\$38,584
4. Administration & Finance	Confidential Secretary	\$29,138
5. Police	Report Technicians (3)	\$30,213
6. Common Council	Intern V (Griffin)	\$8.00 per hour
7. Public Works	Street Worker	\$26,779
8. Public Works	Laborer II	\$24,430
9. Permit & Inspection Services	Supervisor of Licenses	\$40,926
10. Fire	Fire Commissioner	\$102,344
11. Fire	Deputy Commissioner (2)	\$89,372

12. Public Works

Account Clerk-Typist

\$26,271

The Board then passed a motion ratifying the prior approval of Chairman Baker and Vice Chair Townsend. Motion by Masiello second by Stenhouse. Vote 8-0.

Water System

Commissioner of Administration and Finance, James Milroy, Ph.D. updated the Board with the justification of why the Buffalo Water Board and Erie County Water Authority should merge. Common Council President David Franczyk explained that the Common Council was still deliberating on the issue. Chair Baker said that though the water system is a huge asset for the City, the system is aging and needs repair. Mayor Masiello mentioned that if the merger doesn't occur water rates will certainly rise. McCall motioned that the BFSA go on record urging prompt approval of the transaction by the Council. Referencing McCall's motion, Director Tobe requested that the Authority reserve the right to review the final details of the agreement when complete and stressed that the resolution was not an endorsement of the final proposal.

The Directors voted to approve Resolution 04-111 calling for swift action on the sale of the water system. Motion by McCall second by Wilmers. Vote 8-0 to take effect immediately.

RESOLUTION NO. 04-111

CALLING FOR SWIFT ACTION ON THE SALE OF THE WATER SYSTEM

WHEREAS, The City of Buffalo is now considering a proposal by the Erie County Water Authority ("ECWA") to purchase the City of Buffalo water system ("Water System") currently owned by the Buffalo Water Board and operated under contract by American Water Services; and

WHEREAS, Under the ECWA proposal, the operation of the Water System would be taken over by ECWA and create efficiencies for both the County and the City systems; and

WHEREAS, the ECWA would assume approximately \$125 million in capital debt from the Buffalo Municipal Water Finance Authority, give the City \$31.5 million to make up for lost revenue in the short term and make annual repairs to the Water System worth at least \$15 million; and

WHEREAS, the Buffalo Water Board approved a Memorandum of Understanding memorializing the terms of the proposal; and

WHEREAS, swift action is needed by the Common Council to approve the transaction in order for it to be eligible for Environmental Facilities Corporation ("EFC") financing before the impact of federal budget cuts can be felt; and

WHEREAS, a referendum on the sale must be scheduled and approved by the electors of the City early next year before the transaction can be finalized; and

WHEREAS, the Buffalo Fiscal Stability Authority (“BFSA”) understands that this is a major action for the Common Council, but finds the concept is worthy of consideration; and

WHEREAS, while the BFSA supports swift action on this measure to keep it financially viable, the BFSA reserves the right to give final approval or disapproval of the proposal if it should reach the BFSA for approval,

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority urges the City of Buffalo Common Council to promptly approve the sale of the Buffalo Water System from the Buffalo Water Board to the Erie County Water Authority.

Litigation Issues

Chief Counsel Darryl McPherson reported to the Directors that there were now six active lawsuits against the BFSA all related to the wage freeze. Two of them were filed after the last meeting. One was by CSEA representing BMHA Public Safety and BURA employees in federal court and the other was by the Firefighters Union to be heard in State Supreme Court by Justice Eugene Fahey.

Hiring Freeze

Ms. Johnson spoke on the history of the hiring freeze, imposed in December 2003 in response to the City’s quarterly report showing a \$2 million shortfall. She noted that the City’s workforce has reduced since that time. It was felt that the hiring freeze promoted discipline in hiring and that it continued to be a good safeguard for the City’s finance. The Directors agreed that the hiring freeze should be subject to periodic review. Based on all the circumstances, BFSA has concluded that the continuation of the hiring freeze remains essential.

Upon completion of its review, the Directors voted to approve Resolution 04-112 to continue the hiring freeze ordered on the City of Buffalo. Motion by Faso second by Stenhouse. Vote 8-0 to take effect immediately.

RESOLUTION NO. 04-112

REEVALUATE HIRING FREEZE ORDERED ON THE CITY OF BUFFALO

WHEREAS, Chapter 122 of the Laws of 2003 as amended by Chapter 86 of the Laws of 2004 authorizes the Buffalo Fiscal Stability Authority (“BFSA”) to review and approve or disapprove contracts or other obligations binding or purporting to bind the City or any covered organization; and

WHEREAS, Section 3858(2)(C) of the Public Authorities Law authorizes the BFSFA to impose a hiring freeze during a control period upon a finding by the BFSFA that a hiring freeze is essential to the maintenance of a financial plan; and

WHEREAS, Section 3858(2)(O) of the Public Authorities Law further provides that the BFSFA may, to the extent it deems necessary or desirable in order to accomplish the purposes of the BFSFA Act, including but not limited to the timely and satisfactory implementation of an approved financial plan, issue a binding order to the appropriate City official; and

WHEREAS, on December 15, 2003, the BFSFA found that the immediate imposition of a hiring freeze upon the City of Buffalo was essential to the maintenance of the City of Buffalo Revised Financial Plan and was necessary to accomplish the purposes of the BFSFA Act and to ensure the timely and satisfactory implementation of the Revised Financial Plan; and

WHEREAS, on December 15, 2003 the BFSFA approved Resolution 03-70, ordering a hiring freeze on the City of Buffalo with certain exemptions; and

WHEREAS, as of November 17, 2004, the BFSFA has granted five hundred and nineteen (519) hiring freeze waiver requests in accordance with the exemption criteria imposed and established by Resolution 03-70; and

WHEREAS, the City's workforce has actually decreased from 2,698 employees in the City's 2003-04 Second Quarter Report to 2,520 employees in the 2004-05 First Quarter Report; and

WHEREAS, the BFSFA finds that the freeze has limited the creation of new positions and has ensured the filling of only necessary vacant positions,

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority finds that the continued imposition of a hiring freeze upon the City of Buffalo is essential to the maintenance of the City of Buffalo's Four Year Financial Plan and is necessary to accomplish the purposes of the Buffalo Fiscal Stability Authority Act and to ensure the timely and satisfactory implementation of the City's Financial Plan.

BE IT ORDERED that the Mayor of the City of Buffalo shall continue to impose a hiring freeze on all positions in the City of Buffalo under the terms and conditions expressed in Resolution 03-70, subject to the waiver process outlined in Resolution No. 04-89.

School Issues

Ms. Johnson reported to the Directors on the Board of Education's (BOE) first quarter report for the FY 2004-05. She noted that the BOE's full year projection was balanced; however a risk that remains in the current year has an inadequate reserve fund, and that the projected growth in sales tax revenues, at 2.5 percent may be overly optimistic in that year to year results are in the negative at this time..

School Contracts

The Directors voted to approve Resolution 04-113 authorizing the School District to enter into two contracts listed in Resolution 04-113. Motion by Faso second by McCall. Vote 8-0 to take effect immediately.

RESOLUTION NO. 04 – 113

AUTHORIZE THE BUFFALO SCHOOL DISTRICT TO ENTER INTO TWO CONTRACTS

WHEREAS, Chapter 122 of the Laws of 2003 as amended by Chapter 86 of the Laws of 2004 permits the Buffalo Fiscal Stability Authority (“BFSA”) to review and approve or disapprove contracts or other obligations binding or purporting to bind the City or any covered organization; and

WHEREAS, Chapter 122 of the Laws of 2003 as amended by Chapter 86 of the Laws of 2004 permits the BFSA to review and approve or disapprove the terms of any proposed settlement of claims against the City or any covered organization including the School District in excess of \$50,000.00; and

WHEREAS, in order to carry out the mission of the BFSA, the BFSA will review contracts or other obligations in excess of \$50,000, though the BFSA Act provides no limitation for such items; and

WHEREAS, the BFSA will review contracts or other obligations in excess of \$50,000, but will require approval by the full BFSA Board when the contract or obligation is valued at \$200,000 or more; and

WHEREAS, School District officials submitted correspondence to BFSA in which they seek the approval of contracts, together with signed BFSA Remittance Approval Request Forms (“RARF”) in which they indicate that there are sufficient funds available for such contracts; and

WHEREAS, BFSA Staff have reviewed such contracts and the RARF and recommend approval of two contracts; and

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority approve and authorize the Buffalo School District to enter into two contracts as listed below:

- | | |
|---|-----------|
| 1. BHNT Architects – designs/specs for library | \$235,000 |
| 2. Critoph Engineering – replacement of underground tanks | \$94,000 |

JSCB

The Joint Schools Construction Boards' developer, Cimminelli presented the Directors with a slide presentation entailing latest developments for Phase I and plans for Phase II of the reconstruction efforts. Chief Operating Officer of the Public Schools Roy Rogers noted that the Schools had received a financial reimbursement commitment letter in the amount of 94.7% from the State of New York. Director McCall questioned whether the women and minority contracting goals had been met for Phase I and II. Mr. Rogers response was that the goals for Phase II are expected to go beyond the minimum requirement, as was the case for Phase I construction. Directors voted to approve the financing for Phase II subject to a review of the geographic distribution of where the construction is planned to occur and receipt of building permits from the State Education Department.

The Directors voted to approve Resolution 04-114 approving financing of Phase II of Buffalo Schools development program. Motion by McCall second by Faso. Vote 8-0 to take effect immediately.

RESOLUTION NO 04-114

APPROVING FINANCING OF PHASE II OF BUFFALO SCHOOLS DEVELOPMENT PROGRAM

WHEREAS, the Buffalo City School District ("the District"), in cooperation with the City of Buffalo ("the City") and the Joint Schools Construction Board ("the JSCB"), has undertaken a comprehensive program to redevelop the educational facilities ("the Program"), is nearing completion of Phase I of the Program and plans to commence Phase II of the Program in early 2005; and

WHEREAS, the State Legislature, by Chapter 605 of the Laws of 2000, as amended by Chapter 59 of the laws of 2003 and Chapter 421 of the Laws of 2004, ("the Buffalo Schools Redevelopment Act") has authorized the financing of Phases I and II of the Program; and

WHEREAS, Section 3, subd. 3 of Chapter 421 of the Laws of 2004 provides:

The financing of the phase II projects through the Erie county industrial development agency borrowing as authorized by this legislation will be subject to review and approval by the Buffalo Fiscal Stability Authority in accordance with its enabling statute. The scope of projects to be financed in Phase II has been expressly authorized in this legislation and is subject to the approval of the commissioner of education. In addition, such financing may result in certain additional project funding financing costs which are not incurred in typical school district general obligation bond issues.

; and

WHEREAS, Section 16 (b) of the Buffalo Schools Redevelopment Act provides a safeguard against unnecessary costs in the financing of Phases I and II by the issuance of bonds by the Erie County Industrial Development Agency ("ECIDA") by requiring the JSCB, the City and the District to compare the costs of such financing with the cost of financing by the Municipal Bond Bank Agency ("MBBA"), requiring a determination by MBBA of the cost and interest rate that would be incurred if the financing were by the issuance of bonds by MBBA, and requiring the JSCB, the City, the District and ECIDA to employ the financing mechanism that will result in the lowest cost to the taxpayers of the City and the State; and

WHEREAS, Section 3858, subd. 2 (i) of the Public Authorities Law provides that this Authority:

(i) shall, with respect to any proposed borrowing by or on behalf of the city or any covered organization on or after July first, two thousand three, review the terms of and comment, within thirty days after notification by the city or covered organization of a proposed borrowing, on the prudence of each proposed issuance of bonds or notes to be issued by the city or covered organization and no such borrowing shall be made unless first reviewed, commented upon and approved by the authority. The authority shall comment within thirty days after notification by the city or covered organization of a proposed borrowing to the mayor, the comptroller, the council, the director of the budget and the state comptroller and indicate approval or disapproval of the proposed borrowing.

; and

WHEREAS, Section 3858, subd. 2 (h) of the Public Authorities Law provides that this Authority:

(h) may review and approve or disapprove contracts or other obligations binding or purporting to bind the city or any covered organization;

; and

WHEREAS, the District has notified this Authority that it proposes to finance Phase II by agreement with ECIDA for issuance of ECIDA bonds;

WHEREAS, this Authority has reviewed the proposed borrowing by ECIDA on behalf of the District and has found it to be financially sound, prudent and in the public interest and especially the interest of the school children of the City; and

WHEREAS, this Authority has reviewed certain proposed contracts to be entered into by the City, the District and the JSCB in relation to the borrowing;

NOW, THEREFORE, it is:

RESOLVED, that this Authority approves the proposed borrowing by ECIDA on behalf of the District to finance Phase II of the Program, in an amount not to exceed \$345 million subject to approval by the Executive Director of the final price terms of the bond sale and confirmation by the Executive Director that the geographic distribution of the Program is reasonable in light of declining enrollment projections; such approval is conditioned upon the State Education Department's approval of the plans and specifications for the Program; and further

RESOLVED, that this Authority authorizes the City, the District and the JSCB to enter into necessary and appropriate contracts in relation to the borrowing; and further

RESOLVED, that the Chairman, Vice Chair, Executive Director, Chief Financial Officer or Chief Counsel of the Buffalo Fiscal Stability Authority are hereby authorized and directed to execute and deliver any agreements, certificates, documents, papers or other written instrument, to make any changes, modifications or amendments as he or she deems necessary, to do all other things and to take all other actions necessary and appropriate in their judgment, to consummate the transactions contemplated by this Resolution.

Vice Chair Townsend , Director Faso and Director McCall were then excused from the meeting.

Other Covered Organizations

BURA

Tim Wanamaker updated the Board with the news that \$5 million in HOME funds were recently released from the federal Department of Housing and Urban Development. He mentioned that though there is no room within the budget, a collections person would need hired in order to meet the gap closing efforts by increasing revenues through increased collections. Director Tobe congratulated Mr. Wanamaker and BURA staff on their efforts. Tobe then questioned the actions taken against those responsible for funding ineligible projects in the amount of \$2.2 million that BURA is now being forced to pay back through voluntary grant reductions. Mr. Wanamaker responded that indeed the funds were lost, some property was recovered and that the person responsible is no longer on staff. Director Stenhouse stated the importance of making sure tax dollars are used to improve the quality of life upon those in need.

BMHA

BMHA Executive Director Sharon West read a statement, which she submitted to the Board regarding the Housing Authority's progress with their independent audit and quarterly financials. She indicated that the Housing Authority is faced with a \$2.3 million shortfall for the current year and that the BMHA must change its operations in order to balance the foreseeable cuts in their federal funding. Director Tobe noted these circumstances could warrant a hiring freeze. BFSA will not take that action at this time, but will be monitoring BMHA closely.

There being no further business, Chair Baker entertained a motion to adjourn, which was duly seconded unanimously.

The meeting adjourned at 4:35 p.m.