MINUTES
BUFFALO FISCAL STABILITY AUTHORITY
MONDAY, JANUARY 28, 2008

The following are minutes of the Buffalo Fiscal Stability Authority (BFSA) meeting held on Monday, January 28, 2008, at the Buffalo & Erie County Public Library's Central Branch.

Directors Present: Arthur, Brown, Collins, Giardino, Johnstone, Kolkmeyer, Mertz, Norwood and Townsend

Staff Present: Kelly, Link, Miller, Mitchell, Mobley and Stefko

Others Present: Paul Braunsdorf (BFSA Counsel with Harris Beach)

Opening Remarks

The regular meeting of the Buffalo Fiscal Stability Authority (BFSA) was called to order at 1:10 pm by Chair Paul J. Kolkmeyer. The meeting was convened by a Notice of Meeting sent to the Board of Directors and announced to the public and press.

Chair Kolkmeyer pointed out the emergency evacuation exits. He acknowledged and welcomed Erie County Executive Chris Collins to the BFSA Board. He requested a roll call from Secretary Arthur. Finding a quorum present he called the meeting to order.

Approval of Minutes

Chair Kolkmeyer directed the Board to BFSA's December 11, 2007 meeting minutes and asked for a motion to approve.

Motion by Brown, second by Arthur. Vote 9 – 0 to take effect immediately.

RESOLUTION NO. 08-01

APPROVING MINUTES AND RESOLUTIONS FROM DECEMBER 11, 2007

BE IT RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meeting of December 11, 2007, and ratifies and affirms resolutions numbered 07-65 through 07-67 that were approved December 11, 2007.

This resolution shall take effect immediately.

BFSA Issues (Old Business)

Collective Bargaining Agreement

Mayor Brown made a motion to reorder the agenda, and reconsider a proposed collective bargaining agreement with the City's Crossing Guards.

Second by Director Arthur. Vote 9 – 0 to revisit the issue.

Chair Kolkmeyer informed the Board that staff presentations had been prepared to reexamine the pertinent issues involved with the proposed contract.

Mayor Brown requested an immediate vote on the contract, stating the issue has been on the table for some time and everyone has had ample time for review of the contract.

Director Johnstone made a motion to include the presentations as background information. Vice Chair Townsend offered a second to this motion.

A brief discussion followed regarding the next proper course of action. Director Johnstone questioned whether Mayor Brown had moved to vote on the Crossing Guard contract. Director Arthur responded that a motion to vote on the contract would not be proper since the Board not yet voted to discuss the contract out of the agenda's sequence as requested by Mayor Brown.

Chair Kolkmeyer clarified the situation by explaining the next action required was a vote by the Board to determine if the contract should be reviewed by the Board immediately rather than in according to the original agenda order. It was determined that discussion and the presentations would be included as part of the overall discussion.

Chair Kolkmeyer explained that the Mayor has requested BFSA to reconsider the CBA between the Crossing Guards and the City. He called for a motion to put the contract back on the table.

Director Johnstone asked Harris Beach Counsel Paul Braunsdorf, Esq., if he concurred with Chair Kolkmeyer. Counsel Braunsdorf agreed with this interpretation.

Chair Kolkmeyer stated that the motion to move the item forward with discussion had been made and seconded. He called on the Board to vote. Vote 9-0 to reintroduce the item.

Beginning discussion of the item, Mayor Brown informed the Board of his January 14th letter to Chair Kolkmeyer outlining the benefits and concessions of the contract and the reasons it should be ratified by the Board. Key tenets of the contract include:

- Affordability - contractual provisions are fully funded in the current four year plan and the total costs over the period are $1,023,749;
- Extension of management rights - provision for drug testing, prohibited cell phone use, dress standards for employees;
- Increased contribution to healthcare - 5% contribution effective 12/1/2007, 10% contribution effective the following year along with eligibility for payments of $50 single and $100 family if opting out of healthcare coverage; and
- Increase in hourly wage to become compliant with the City of Buffalo Living Wage.

Mayor Brown recommended approving the contract based on the provisions as presented.

Director Townsend questioned the meaning of language in Mayor Brown's letter to Chair Kolkmeyer, which pledged to restructure workforce costs in future bargaining agreements, specifically for retirees and new hires.

Mayor Brown responded that the clause refers to provisions to be included in future contracts with the larger, higher paid bargaining units. This would include extending the number of steps for new employees and contribution to healthcare plans.

Director Giardino questioned Mayor Brown about the Common Council vote when they approved this resolution. Mayor Brown responded that the Common Council had unanimously approved this measure.

Director Mertz asked if the City currently makes contributions toward retiree benefits and what impact the pending OPEB adjustments will have on the General Fund as a result of GASB 45 requirements.

Mayor Brown informed the Board that the City currently accounts for healthcare benefits on a "pay as you go" basis. He asked the City's Commissioner of Administration, Finance, Policy and Urban Affairs, Janet Penksa, to address Director Mertz's OPEB and GASB 45 questions.

Commissioner Penksa updated the Board on the requirements of GASB 45, stating that the requirement does not currently mandate funding of OPEB liabilities, but rather that the liabilities be disclosed. She noted that the financial statements for year ending June 30, 2008 will disclose the City's $860 million OPEB liability, but the ruling does not currently require this liability to be funded. This is partly because of statutory restrictions which prohibit municipalities from transferring funds for post retirement benefits, excluding pensions, into trusts.

Director Townsend noted that the OPEB expense is forecast to be "astronomical." The expense is expected be about $50 billion for the State, with an equal amount forecast for the New York City liability. Mayor Bloomberg has already set aside reserves for this liability given the realistic expectation that the municipalities and the State will be required to fund this liability in the near future.

Commissioner Penksa stated that the State Controller's office does not share this expectation. According to conversations with the State Controller's office, municipalities have the option of creating a "rainy day fund" as a reserve, which the City has done. Until the State creates a trust similar to that which is available for pension funds, municipalities and local governments are limited in what they can do and statutorily prohibited from establishing any trusts in an attempt to fund OPEB expenses.

Director Norwood asked for Commissioner Penksa's opinion on Wall Street and the investment community's reaction to the OPEB numbers once they become public information. Director Mertz also asked if there were any OPEB funding provisions in the current four year plan.

Commissioner Penksa pointed out that funding for each year's active and retiree healthcare and related benefit expenses are in the current four year plans. While the total liabilities for active and retiree current and forecast healthcare and related benefits expense are not in the four year plan, estimated to be approximately $2 billion for the City and School District, it is highly unlikely that the State would require funding of this entire liability because it would "wipe – out" net assets and throw both the State and municipalities into receivership.

Director Mertz noted that the current annual healthcare and benefits expense for the School District is about $90 million, with $50 million being allocated to retirees and $40 million to active employees. These costs are projected to rise to about $130 million annually, with $80 million allocated to retiree costs and $50 million for active employees.

Commissioner Penksa reminded the Board that the current issue on the table is the Crossing Guard contract and cautioned against attempting to solve all pending issues within the confines of this contract.

Chair Kolkmeyer asked Acting Executive Director Joseph Stefko to proceed with a presentation on retirement benefits based on source data from the City's June 30, 2007 Comprehensive Annual Financial Report (CAFR).

Dr. Stefko's presentation summarized the growth in state aid and unrestricted, unreserved fund balances for the City and School Districts. The presentation also highlighted the impact of the projected $1.2 billion school district OPEB liability on unrestricted net assets. The presentation concluded that:

- Short term progress continues – When analyzed on a "fund basis", i.e., revenues are recognized when received and expenses are recorded when paid, there has been positive improvement in the fund balance. This has been the trend since 2003-04. The 2007 amount of unreserved undesignated fund balance for the City was about $76 million, and about $16 million for the School District;
- The long term contains risks – Analyzing the CAFR from a "full accrual" accounting perspective, all liabilities that have been incurred and/or pledged are recorded. This method presents a long term and more comprehensive picture of the City's financial universe. From this vantage point, one can assess whether resources cover the liabilities in the long run. The City and School District are in a negative net assets position, from this perspective, which means insufficient funds to cover long term liabilities;
- Post employment benefit liabilities looms large; and
- Contractual decisions today affect long term liabilities.

Director Arthur requested future presentations display City and School District data separately to avoid confusion and emphasize the fact that the budgets are independent of one another.

Dr. Stefko continued with a comparison of the healthcare and other fringe benefits of City and School District employees with these same benefits of other employees of Western New York and the national average for these benefits for the employees of all sectors. He related the higher rates of benefits for City and School District employees to the increased costs of OPEB liabilities in the long term.

Chair Kolkmeyer asked if there were additional questions. Mayor Brown responded the City had also prepared a presentation, which Commissioner Penksa would present, that offered a different perspective of the affordability of the Crossing Guard contract.

Director John Giardino commented on the facts and figures in the presentation and asked if there was a recommendation for the Crossing Guard contract based on the macroeconomic data presented by Dr. Stefko.

Chair Kolkmeyer stated that the current Crossing Guard contract is in essence a "health insurance contract." Employees are currently paid about $7 per hour but when you consider health insurance the rate increases to about $21/hour. Those healthcare costs will continue to be incurred in the future since today's contracts impact future expenditures and the OPEB liability that is going to be recognized on the books. Although this is a relatively small contract, this issue will be of importance in every contract under review.

Director Giardino asked what specifically is the Board supposed to do about the provisions of the contract.

Chair Kolkmeyer responded that the Board should be looking for substantive structural changes in contracts, possibly beginning with new hires. He stated that this is an opportunity to use the funds that have been provided by the State to make structural cost changes in the contract.

Director Giardino asked for further clarification given that the 157 crossing guards currently receive the benefits. He questioned whether the Board should be in the business of negotiating terms and contracts.

Chair Kolkmeyer noted that the costs will increase if the trend continues into the future and new hires come on Board, with no changes to the contract.

Director Mertz stated that the standard around the country is to include provisions for future benefit modifications in the current contract as it relates to new hires. Other organizations whose healthcare costs have grown enormously incorporate changes that will occur at some later date in the current contract. BFSA has the responsibility to look at the long-term fiscal viability of each contract.

Director Giardino stated that the Board is faced with some extremely complex issues, but BFSA is not the employer who has to make decisions regarding the provisions of the contract. The role of BFSA is to review the budget and the four-year plan and not to usurp the roles of the Mayor and Common Council. It is the job of City management to determine the best solutions for problem issues.

County Executive Collins responded that current data on past performance does not necessarily provide assumptions that will carryover into the future. It is not reasonable to conclude that the healthcare cost explosion of the past can be extrapolated to estimate future healthcare costs. He cautioned against applying the trend data of the past ten or twenty years to make decisions about the next fifty years. Collins stated that every contract should be evaluated on its own merits and the issue should not be compounded by relating the contract to future negotiated contract as “setting a precedent.” Precedents apply to legal cases not the terms and conditions of independently negotiated contracts. The Board should consider the affordability of each contract as a stand alone contract. He noted that he would cast his vote based on his respect for the unanimous approval vote of the Common Council and the merits of this contract.

Director Townsend stated that it is not the Board’s responsibility to negotiate contracts or attempt to “run the City.” The Board’s mission is to provide judgment to determine how to get the City on a path of long term fiscal sustainability and stability. Director Townsend advised the Board not to consider each contact discreetly since healthcare costs have been rising at a rate of 10% annually. BFSA must look at the trends and implications of GASB 45, not abstract information. This kind of negative information will affect the views Wall Street and the rating agencies. Given that the requirements for pension accounting include both the disclosing and funding of the liability, it is reasonable to assume that, in the near future, it will become a requirement to fund healthcare and benefits expense in addition to disclosing the full liability.

Director Townsend pointed out that between 2001 and 2007 there was a twenty percent reduction in the workforce. This was inverse to total spending for fringe benefits, which increased by 80%. The funds used to cover the increase in fringe benefits could have been better used for tax relief, jobs, or children’s programs. In the current economic climate, heavily employer-subsidized benefits are not the norm. Director Townsend commended Mayor Brown on his success in negotiating a contract with concessions on healthcare contributions, noting that this is a step in the right direction. However, the more important question is the benefits of new employees. The issue is not living wage, but bringing the benefit structure for new employees in line with community norms.

Director Arthur suggested a Board vote on the previous question since the discussion on the Crossing Guard contract had been underway for some time.

Mayor Brown yielded to a vote on the previous question which, he stated, would be followed by a presentation by Commissioner Penksa.

Chair Kolkmeyer asked for a motion to end the debate on this issue. The motion to end debate was approved 9-0. Discussion on previous question was terminated.

Chair Kolkmeyer then requested a roll call on the question of approval of the Crossing Guard contract.

The resolution was approved 6-3 (Kolkmeyer, Mertz and Townsend dissent).

RESOLUTION NO. 08-02

APPROVAL OF COLLECTIVE BARGAINING AGREEMENT

WHEREAS, Section 3858 of Chapter 122 of the Laws of 2003, as amended, provides that during a control period, the Buffalo Fiscal Stability Authority "may review and approve or disapprove contracts or other obligations binding or purporting to bind the City or any covered organization," and

WHEREAS, Section 3858 of Chapter 122 of the Laws of 2003, as amended, requires that during a control period, the Buffalo Fiscal Stability Authority "shall review and approve or disapprove any collective bargaining agreement to be entered into by the City or any covered organization, or purporting to bind, the City or any covered organization," and

WHEREAS, Section 3858 of Chapter 122 of the Laws of 2003, as amended, further requires that "prior to entering into any collective bargaining agreement, the City or any covered organization shall submit a copy of such collective bargaining agreement to the Authority, accompanied by an analysis of the projected costs of such agreement and a certification that execution of the agreement will be in accordance with the financial plan," and

WHEREAS, Section 3858 of Chapter 122 of the Laws of 2003, as amended, further requires that "the Authority shall promptly review the terms of such collective bargaining agreement and the supporting information in order to determine compliance with the financial plan, and shall disapprove any collective bargaining agreement which, in its judgment, would be inconsistent with the financial plan," and

WHEREAS, Section 3858 of Chapter 122 of the Laws of 2003, as amended, further requires that "no collective bargaining agreement binding, or purporting to bind, the City or any covered organization after the effective date of this title shall be valid and binding upon the City or any covered organization unless first approved by resolution of the Authority," and

WHEREAS, the City of Buffalo has presented to the Buffalo Fiscal Stability Authority a proposed collective bargaining agreement with the Buffalo Crossing Guards Association, Inc., and

WHEREAS, the City of Buffalo has submitted the certification and information required by Section 3858 of Chapter 122 of the Laws of 2003, as amended.

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority hereby approves the proposed collective bargaining agreement between the City of Buffalo and the Buffalo Crossing Guards Association, Inc., covering the period July 1, 2004 through June 30, 2010.

This Resolution shall take effect immediately.

Director Johnstone asked if a caveat could be added to the resolution emphasizing the importance of structural cost control in future contracts. Mayor Brown added that the City also understands the importance of this issue which is the subject of the forthcoming presentation by Commissioner Penksa.

Commissioner Penksa presented data highlighting the difficulties of attracting and retaining highly qualified personnel if both salaries and benefits are not competitive when compared to the private sector and other municipalities. Additionally, structural reform and issues were highlighted by the following:

- City workforce reduction over the last 40 years;
- Property value increased since FY 2004;
- Improving City taxing margins;
- Disproportionately low share of sales tax revenue as a percentage of total revenue when compared to Syracuse and Rochester;
- The City's three main revenue streams – property tax, sales tax and Federal and State aid;
- New York State's commitment to State aid over the last five fiscal years;
- State Aid has increased 39 times since 1960; and
- The Administration's collective bargaining principles which include:
    - Extension of Management Rights;
    - Benefit Savings;
    - Workforce Restructuring;
    - Residency;
    - Elimination of Outstanding Lawsuits; and
    - Affordability.

Mayor Brown added comments regarding salary data from smaller cities within the state, indicating higher pay for similar positions which has impacted the City's ability to recruit top talent.

Commissioner Penksa informed the Board that the City does not have disability benefits, but instead uses sick time as an option to cover disability needs.

Commissioner Penksa turned to the OPEB issue and informed the Board GASB 45 clearly states that the funding of OPEB is a policy decision of local governments. Therefore this is a policy decision that Mayor Brown is entitled to make. She also noted that the City's position is that it would be prudent to wait for guidance and legislation from the State.

Director Norwood asked if the City has made any attempt to benchmark the City's OPEB liability and GASB 45 requirements against other municipalities. Commissioner Penksa replied that GASB 45 does not require any benchmarking comparisons, but any information along those lines, or benchmarked against state authorities similar to BFSA, would clearly demonstrate that Buffalo's salaries and benefits are lower.

Commissioner Penksa continued the presentation with the discussion on unrestricted net assets. She reiterated the improvement of unrestricted net assets for both the City and School District in the most recent years, but cautioned against the use of unrestricted net assets to determine the fiscal strength of the City. She presented data capturing the significant progress made by the current administration in reducing structural costs such as:

- implementing very conservative budgeting measures;
- reducing the workforce;
- establishing efficiency measures and performance metrics such as Citistat; and
- debt management policy of City Controller to reduce the overall level of debt.

Commissioner Penksa presented data on the improving fiscal health of the City. She noted the improvement in the City's credit rating, the increase in the property tax margin due to growth in assessed property values and the influx of approximately $4.4 billion in new economic development. She addressed the issue of state aid by explaining the relationship of state aid to the allocation of local sales tax revenue. The City receives a disproportionate share of local sales taxes at 12.8%, compared to Rochester at about 25% and Syracuse at approximately 30%. This also impacts the City's share of state aid and enters into the local taxing paradigm as determined by the State. State aid should not have the stigma it currently has and not be used to penalize the City. The City has relied on state aid to reduce property taxes unlike some municipalities that increased property taxes in proportion to the increase in assessed values. It is a conscious decision of Mayor Brown's administration to use state aid in this manner and should therefore not be viewed negatively. She also informed the Board of the State's commitment to providing increased aid to the City and School District, but the State has limited their ability, via the taxing paradigm, to raise revenues from alternative sources.

The City has decided to refrain from spending state aid or including it in the budget partially because the decision to do so in the past created a fiscal crisis and the creation of the BFSA when this aid was reduced. State aid is being used to augment the "rainy day fund" to reduce the City's dependence and the risk of a crisis if the aid is decreased in the future.

The last slide in Commissioner Penksa's presentation reiterated the collective bargaining principles that will govern contract agreements going forward. These principles include:

- extension of management rights;
- domestic partner benefits;
- recovery of pay for time not worked;
- defined healthcare plan with carrier flexibility, change from 201 plan to 204 plan to reduce costs;
- workforce restructuring for new hires to reduce salary and benefits;
- increase of steps from five to seven;
- increase in medical insurance contributions;
- increase in time required to vest for medical benefits;
- committed to residency requirement;
- elimination of outstanding lawsuits; and
- affordability of the contract.

Chair Kolkmeyer called for questions. Director Mertz asked if there was a set policy or procedure for funding the "rainy day fund".

Commissioner Penksa informed the Board that 1.5% of total expenditures are set aside for the "rainy day fund". The level of funding was decided upon with input from the City's financial advisor so as to lessen the impact on the unreserved, unrestricted fund balance. The "rainy day fund" will be a restricted reserve.

Chair Kolkmeyer asked if there were other comments.

Mayor Brown thanked the Crossing Guard union for cooperating with the City of Buffalo in negotiating this contract which contains concessions. The Mayor noted that while BFSA prevented paying salaries compliant with the City's living wage ordinance during the wage freeze, once the freeze was lifted the City moved expeditiously to grant the crossing guards a minimum wage consistent with the living wage ordinance. Mayor Brown also informed the Board of the City's intention to submit budget modification to the Council and to BFSA to bring all of the City's employees into compliance with the living wage law. He feels that this initiative is affordable, which the Board should consider as the final test.

Director Giardino noted that this contract created stress for the Board, but the Board should feel good about approval. The risks were highlighted and the issues are real. These are issues faced by executives in every sector, but the City need to move forward. Too often there is a negative reaction to progress and the City reputation has suffered because of this. He stressed the need for a new thought process and support for the Mayor and his administration to create the momentum to move forward.

BFSA Issues

Governance Committee Meeting

Chair Kolkmeyer asked Director Townsend, the Governance Committee Chair, to update the Board on the meeting held earlier that day.

Director Townsend explained the three issues reviewed by the Committee: the draft Internal Control Program Handbook, BFSA's Corporate Governance Guidelines and the Whistleblower Policy.

The objective of the internal control framework presented in the handbook is to align BFSA's internal control measures with the requirements of the Public Authorities Accountability Act (PAAA). The staff plans to present the final version for approval at the next Governance Committee meeting.

The staff also presented draft Corporate Governance Guidelines for review. These guidelines apply the principles of Sarbanes-Oxley and corporate governance to areas ranging from Director orientation to conflicts of interest. This initiative was undertaken at the request of Chair Kolkmeyer and will be presented for approval at the next Committee meeting.

Adoption of Required Whistleblower Policy

The last policy reviewed by the Committee was the Whistleblower Policy. This policy is currently a section of the Employee Handbook. Director Townsend explained that this is another PAAA requirement and was submitted by staff for approval.

Chair Kolkmeyer requested a motion to approve.

Motion by Norwood, second by Arthur. Vote 9-0 to take effect immediately.

RESOLUTION NO. 08 -03

ADOPTION OF WHISTLEBLOWER POLICY

WHEREAS, as a State public authority, the Buffalo Fiscal Stability Authority (“BFSA”) is subject to the provisions and requirements of the Public Authorities Accountability Act of 2005 (“PAAA”); and

WHEREAS, the PAAA requires that all public authorities “establish written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or Board member of the authority, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services”; and

WHEREAS, BFSA already has established and adopted a Code of Ethics.

NOW, THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority hereby adopts the following whistleblower policy: It is the policy of BFSA to encourage employees to report illegal or unethical practices. Employees who have a reason to believe or suspect that BFSA, its agents, employees, Board members or contractors are acting illegally or engaging in unethical practices or acting in a manner contrary to applicable laws must report such activity. Broad categories of suspect conduct include, but are not limited to: violation of law or government regulations; violation of BFSA policy; mismanagement; waste of BFSA and/or taxpayer funds; abuse of BFSA; and wrongful conduct. Some examples include, but are not limited to: dishonest acts and/or fraudulent activity; harassment; discrimination; violation of controlled substance laws; embezzlement; theft; destruction; removal or concealment of property; alteration or falsification of paper or electronic documents; false claims and/or misrepresentation of facts; and inappropriate use of computer systems (including hacking, software piracy, viewing and/or sending unlawful or obscene emails or websites). Any issues or concerns of this type should be brought to the Executive Director or Human Resource Officer. If the Executive Director or Human Resource Officer is involved in the complained of action, the employee may bring this matter to the Chair of the Board of Directors or the State Inspector General’s Office. Any such communication will be strictly confidential. BFSA will not tolerate any form of retaliation against an employee for raising concerns about practices within BFSA.

This resolution shall take effect immediately.

Director Arthur requested a simultaneous vote on items listed on the agenda under "City Issues" tab 4, Budget Modification: Economic Development, tab 5, "Budget Modification: Police Hires, tab 6 "Budget Modification: Hickory Woods Settlement and tab 7, "Capital Budget and Four Year Plan". Chair Kolkmeyer asked the Board to "hold off" on that request until that section of the agenda was reached.

Update on Executive Director Search Process

Chair Kolkmeyer updated the Board on the Executive Director search process. The Chair stated that we received 25 resumes as potential candidates for this position. The Committee reviewed these resumes and has thus far interviewed 5 individuals. At this time the Chair further stated that our plan is to bring 3 of them back for a second interview. We are currently ensuring that the logistics are in place to conduct these interviews. He further stated that a public announcement will be made as to when those interviews are going to take place although they will be done in an executive session. When we pick the date, which we hope to pick within the next 24 to 48 hours, we plan to invite all Board members from the Control Board to join the Committee during that final interview process which will actually be conducted in a presentation and Q&A type format. The Chair called for comments from members of the Search Committee and there were none. The Chair called for questions from the Board and there were none.

City Issues

Chair Kolkmeyer returned to the remaining City Issues and repeated Director Arthur's request for a combined vote to include items under tabs 4 – 6.

Director Johnstone, referring to the item under tab 6 Police Hires, asked whether the City could provide information in October regarding overtime costs as impacted by the new hires.
Mayor Brown informed the Board that new officers would be employed by July. Some time after that the City would begin to report overtime costs.

Chair Kolkmeyer asked for additional questions followed by a request for a motion to approve items 4, 5 and 6 simultaneously.

Motion by Arthur, second by Brown. Vote 9-0 to take effect immediately.

RESOLUTION NO. 08-04

APPROVAL OF CITY OF BUFFALO BUDGET MODIFICATION FOR CERTAIN ECONOMIC DEVELOPMENT PROJECTS

WHEREAS, on January 7, 2008, the City of Buffalo ("City") submitted a budget modification request for the 2007-08 fiscal year to the Buffalo Fiscal Stability Authority ("BFSA"); and

WHEREAS, the proposed modification would serve to amend the budget originally approved by BFSA on June 5, 2007 and as modified on November 7, 2007; and

WHEREAS, the modification addresses a single-year change in the City's 2007-08 budget and four year financial plan; and

WHEREAS, the modification would utilize the 2007-08 New York State Aid Incentives for Municipalities ("AIM") funds; and

WHEREAS, in providing increased AIM funding to the City in 2007-08, New York State restricted its use for the following purposes: 1) To maintain, minimize or reduce the real property tax burden; 2) To support investments in technology or other efficiency and productivity initiatives that permanently minimize or reduce the municipality's operating expenses; 3) To support economic development or infrastructure investments that are necessary to achieve economic revitalization and generate growth in the municipality's real property tax base; and/or 4) To minimize or prevent reductions in City services; and

WHEREAS, the City has previously allocated these funds, totaling $12.8 million, into the "Grow Buffalo Trust Fund" to support economic development initiatives, and

WHEREAS, the proposed modification would draw down $5.4 million in these funds for the purpose of funding three economic development projects: 1) $4,638,250 for the purchase of Steelfields, 2) $500,000 for the development of a Jefferson-Utica Business Services Incubator, and 3) $300,000 for the Ira G. Ross Eye Institute; and

WHEREAS, the City's Common Council has approved the budget modification; and

WHEREAS, BFSA staff has reviewed the budget modification and determined that it complies with the requirements of the BFSA Act.

NOW THEREFORE BE IT RESOLVED THAT, the Buffalo Fiscal Stability Authority hereby determines that the proposed budget modification is complete, complies with the standards set forth in Sections 3857 and 3858 of the Buffalo Fiscal Stability Authority Act, and is hereby approved.

This Resolution shall take effect immediately.

RESOLUTION NO. 08-05

APPROVAL OF CITY OF BUFFALO BUDGET MODIFICATION REGARDING CERTAIN COSTS ASSOCIATED WITH POLICE HIRES

WHEREAS, on January 7, 2008, the City of Buffalo ("City") submitted a budget modification request for the 2007-08 fiscal year to the Buffalo Fiscal Stability Authority ("BFSA"); and

WHEREAS, the proposed modification would serve to amend the budget originally approved by BFSA on June 5, 2007 and as modified on November 7, 2007; and

WHEREAS, the modification addresses a single-year change in the City's 2007-08 budget and four year financial plan; and

WHEREAS, the modification would utilize the 2006-07 New York State Aid Incentives for Municipalities ("AIM") funds; and

WHEREAS, in providing increased AIM funding to the City in 2006-07, New York State restricted its use for the following purposes: 1) to reduce the property tax burden, or 2) for initiatives to permanently reduce or minimize the cost of City government; and

WHEREAS, of this AIM funding provided in 2006-07, approximately $6.46 million remains unspent at the present time; and

WHEREAS, this funding increase provided in 2006-07 became part of the City's base State aid level in the current year, and is expected to continue in future years; and

WHEREAS, the City is proposing to utilize a portion of this aid to offset certain costs associated with the hiring of additional police officers in the 2007-08 fiscal year; and

WHEREAS, the 2007-08 budget would increase by $1.18 million; and

WHEREAS, the financial plan would similarly increase to reflect these additional hires, by $2.8 million in 2008-09, by $3.1 million in 2009-10 and by $3.1 million in 2010-11; and

WHEREAS, the City's Common Council has approved the budget modification; and

WHEREAS, BFSA staff has reviewed the budget modification and determined that it complies with the requirements of the BFSA Act.

NOW THEREFORE BE IT RESOLVED THAT, the Buffalo Fiscal Stability Authority hereby determines that the City of Buffalo's proposed budget and financial plan modification is complete, complies with the standards set forth in Sections 3857 and 3858 of the Buffalo Fiscal Stability Authority Act, and is hereby approved.

This Resolution shall take effect immediately.

RESOLUTION NO. 08-06

APPROVAL OF CITY OF BUFFALO BUDGET MODIFICATION FOR HICKORY WOODS SETTLEMENT

WHEREAS, on January 18, 2008, the City of Buffalo ("City") submitted a budget modification request for the 2007-08 fiscal year to the Buffalo Fiscal Stability Authority ("BFSA"); and

WHEREAS, the proposed modification would serve to amend the budget originally approved by BFSA on June 5, 2007 and as modified on November 7, 2007; and

WHEREAS, the modification addresses costs associated with the Hickory Woods settlement; and

WHEREAS, the modification would utilize $7.2 million in unreserved fund balance to offset this one-time expenditure; and

WHEREAS, the City's Common Council has approved the budget modification; and

WHEREAS, BFSA staff has reviewed the budget modification and determined that it complies with the requirements of the BFSA Act.

NOW THEREFORE BE IT RESOLVED THAT, the Buffalo Fiscal Stability Authority hereby determines that the proposed budget modification is complete, complies with the standards set forth in Sections 3857 and 3858 of the Buffalo Fiscal Stability Authority Act, and is hereby approved.

This Resolution shall take effect immediately.

Capital Budget

Chair Kolkmeyer turned to the next item on the agenda, the City's Capital Budget and Capital Improvement Plan. He asked Dr. Stefko to present the summary slides. Dr. Stefko explained that the City typically presents the capital budget and four year plan in the December – January timeframe for review and approval by BFSA. The next phase of the process occurs during the spring when the borrowing is completed. Dr. Stefko reviewed the major project categories of the proposed plan and noted that the proposed borrowing for this year of approximately $30 million is in line with previous years' borrowings, although 1) the School District has funds remaining from last year's capital borrowing and 2) the City includes funds for demolition that could possibly be classified as an operating expense.

Chair Kolkmeyer called for a motion to vote on the plan.

Motion to approve by Arthur, second by Mertz. Vote 9-0 to take effect immediately.

RESOLUTION NO. 08-07

APPROVAL OF CITY OF BUFFALO 2008 CAPITAL IMPROVEMENT BUDGET

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 approve the City of Buffalo's four-year financial plan that encompasses the City of Buffalo, the Buffalo Public Schools and other covered organizations, and may include a Capital budget, and

WHEREAS, the Charter of the City of Buffalo requires the Mayor to prepare and submit a Capital budget and four year recommended Capital improvement program after receiving a recommendation from the Citizens Planning Council ("CPC"), and

WHEREAS, after receiving CPC's recommendation, the Mayor submitted a Capital budget to the Common Council for its consideration, and

WHEREAS, the Mayor has submitted the Capital budget to BFSA for its consideration, and

WHEREAS, there are sufficient resources in the City of Buffalo's approved four-year financial plan to make the debt service payments required by this Capital budget, and

WHEREAS, in approving last year's Capital budget, BFSA noted the following caveat: "That the City of Buffalo continue to reduce its use of Capital borrowing for short-term operating expenses that are not supported by a long-term physical asset with the goal of eliminating the practice," and

WHEREAS, in approving last year's Capital budget, BFSA also noted the following caveat: "That the City of Buffalo continue to rescind authorized but unissued debt whenever possible," and

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby approve the City of Buffalo 2008-2012 Capital Improvement Program Budget as submitted by the Mayor on January 10, 2008, and

BE IT FURTHER RESOLVED, that BFSA does hereby reaffirm the caveats it included in its approval of last year's Capital budget, "That the City of Buffalo continue to reduce its use of Capital borrowing for short-term operating expenses that are not supported by a long-term physical asset with the goal of eliminating the practice," and "That the City of Buffalo continue to rescind authorized but unissued debt whenever possible."

This resolution shall take effect immediately.

Chair Kolkmeyer commented that while he is in favor of the current capital plan, he questions an issue raised in a letter to the Mayor from Arnold Gardner, Chair of the Citizen's Planning Council, regarding the lack of funding for critical infrastructure items. He questioned the reason for continued funding of demolition in the capital plan rather than as an operating expense, when the $2 million in this plan could be allocated to the projects identified in the Gardner letter.

Mayor Brown called Tim Wanamaker, Director of the Office of Strategic Planning, to address Chair Kolkmeyer's questions. Director Wanamaker explained the demolition costs included in the Capital budget are tied to projects for economic development.

<u>JSCB Phase III-B Bonding</u>

At Chair Kolkmeyer's request, Dr. Stefko summarized the proposed Joint Schools Construction Board Phase III-B bonding. Utilizing a slide presentation, he made the following points:

- Of the proposed ECIDA borrowing of $191 million, $159.1 million will be for the project fund;
- Phase III-B includes five schools and technology upgrades;

- New York State reimbursement covers the cost, and SED approval is required.

Dr. Stefko noted that the resolution as presented contained a typo in the fourth "resolved" clause. As presented, the sentence reads, "RESOLVED, that the Chair, the Vice Chair, Acting Executive Director, Chief Financial Officer of the Buffalo Fiscal Stability Authority are hereby authorized…" It should be amended to read, "RESOLVED, that the Chair, the Vice Chair, Acting Executive Director **or** Chief Financial Officer of the Buffalo Fiscal Stability Authority are hereby authorized…"

Director Mertz queried whether or not the City Administration was satisfied with the level of compliance toward the diversity requirement from the contractors, specifically LPCiminelli. Mayor Brown responded that they were indeed satisfied and that this compliance is constantly monitored. Further, the JSCB project has been a model of success.

Chair Kolkmeyer asked why the District had included money in the just-approved capital budget, and was also requesting JSCB borrowing approval. School District CFO Gary Crosby responded that they are two different capital initiatives. JSCB is reconstructing school facilities, while the capital borrowing will fund certain hardware such as computers.

Motion to approve by Arthur, second by Mertz. Vote 9-0 to take effect immediately.

RESOLUTION NO. 08-08

APPROVING FINANCING OF PHASE IIIB OF BUFFALO SCHOOLS RECONSTRUCTION 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"), has completed Phase I, is nearing completion of Phase II and has commenced the first part of Phase III of the Program (known as Phase IIIA); and

WHEREAS, the State Legislature, by Chapter 605 of the Laws of 2000, as amended by Chapter 59 of the laws of 2003, Chapter 421 of the Laws of 2004, and Chapter 283 of the Laws of 2006 (collectively, "the Buffalo Schools Redevelopment Act") has authorized the financing of Phases I, II and III of the Program through the issuance of bonds and notes by the Erie County Industrial Development Agency ("ECIDA") that, during the existence of a Control Period (as defined in the Buffalo Fiscal Stability Authority Act (the "BFSA Act"), is subject to review and approval by the Buffalo Fiscal Stability Authority (the "Authority"); and

WHEREAS, the scope of projects to be financed in the second part of Phase III (known as Phase IIIB) has been expressly authorized by the Buffalo Schools Redevelopment Act and is subject to the approval of the commissioner of education; 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 and III by the ECIDA by requiring

(a) the JSCB, the City and the District to compare the costs of ECIDA financing with the cost of financing by the Municipal Bond Bank Agency (“MBBA”), (b) 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 (c) 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(2)(i) of the Public Authorities Law provides that the Authority “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(2)(h) of the Public Authorities Law provides that the Authority “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 the Authority that it proposes to finance Phase IIIB by agreement with ECIDA for issuance by ECIDA of its School Facilities Revenue Bonds, (City School District of the City of Buffalo Project), Series 2008A (the “Series 2008A Bonds”); and

WHEREAS, the 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;

NOW, THEREFORE, it is:

RESOLVED, that prior to the final pricing of the Series 2008A Bonds the District shall have (i) provided the Authority with a comparison of the costs and rates of ECIDA financing with the cost and rates that would have been incurred if the financing were undertaken by MBBA, and, (ii) demonstrated that the financing of Phase IIIB through ECIDA will result in the lowest cost to the taxpayers of the City and the State as required by Section 16 (b) of the Buffalo Schools Redevelopment Act; and further

RESOLVED, that the Authority approves the proposed borrowing by the District through ECIDA to finance Phase IIIB of the Program, provided that (i) the aggregate principal par amount of Series 2008A Bonds to be issued shall not exceed $170 million and (ii) the Chair, the Vice Chair, the Acting Executive Director, or the Chief Financial Officer of the Authority shall approve the final terms and pricing of the Series 2008A Bonds in writing. Such approval is further conditioned upon the State Education Department’s approval of the plans and specifications for the Program; and further

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

RESOLVED, that the Chair, the Vice Chair, Acting Executive Director, or Chief Financial Officer 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.

This Resolution shall take effect immediately.

At 2:53 PM Director Giardino exited the proceedings.

At 2:54 PM Director Mertz exited the proceedings.

<u>BMHA Issues</u>
Capital Budget

At Chair Kolkmeyer's request, Dr. Stefko summarized the proposed Capital Budget for the Buffalo Municipal Housing Authority (BMHA).

Motion to approve by Arthur, second by Brown. Approval 7-0 to take effect immediately.

RESOLUTION NO. 08-09

APPROVAL OF BUFFALO MUNICIPAL HOUSING AUTHORITY 2007-2008 CAPITAL BUDGET

WHEREAS, the mission of the Buffalo Municipal Housing Authority ("BMHA") is to provide safe, decent and affordable public housing, which is of vital importance to a region such as Buffalo, and

WHEREAS, BMHA presented its Capital budget to the United States Department of Housing and Urban Development ("HUD") for approval, which was granted by HUD in September 2007, and

WHEREAS, HUD approved a BMHA Capital budget in the amount of $10,349,533, which is an increase of $497,649 from what was approved for BMHA's Capital program in the prior year, and

WHEREAS, HUD has also approved replacement factor grant in the amount of $1,509,489 which must be used for redevelopment, and

WHEREAS, BMHA has developed a list of improvements to its housing stock to be completed with the use of the Capital funds, and

WHEREAS, BMHA, in accordance with HUD regulations, must commit these funds within two years and spend them within four years.

NOW THEREFORE BE IT RESOLVED THAT, the Buffalo Fiscal Stability Authority approves the Buffalo Municipal Housing Authority's 2007-2008 Capital budget and replacement housing factor grants.

Closing Remarks

Chair Kolkmeyer requested a motion to adjourn. Motion to adjourn by Arthur, seconded unanimously. The meeting adjourned at 2:55 pm.