

**BUFFALO FISCAL STABILITY AUTHORITY**  
**Meeting Minutes**  
**Wednesday, September 30, 2009**

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The following are the minutes from the Buffalo Fiscal Stability Authority's board meeting held on Wednesday, September 30, 2009, at the Buffalo & Erie County Central Public Library.

**Directors Present:** Arthur, Brown, Collins, Johnstone, Kolkmeier, Mertz, Mesiah and Townsend

**Director Absent:** Giardino

**Staff Present:** Kelly, Link, Miller, Mobley and Mongold

**Additionally Present:** Patti Letteiri, BfSA's Outside Legal Counsel with Harris Beach, PLLC  
Donna Gonser, Audit Partner with Lumsden & McCormick, LLP

**Opening Remarks**

The board meeting of the Buffalo Fiscal Stability Authority (BFSA) was called to order at 1:05 pm by Chair Kolkmeier. He summarized the meeting's agenda as follows:

- A recommendation from the Audit, Finance and Budget Committee for the receipt and acceptance of the independent audited financial statements as provided by Lumsden & McCormick, LLP, independent auditors;
- A recommendation for approval of the 2009 Annual Report from the Audit, Finance & Budget Committee;
- A brief presentation on the Intermunicipal Parks Cooperative Agreement (the "Agreement") between Erie County (the "County") and the City of Buffalo (the "City") which transferred the management of the City-owned parks to the County on July 1, 2004;
- Commentary from the County Executive Chris Collins relative to County management/union negotiations; and
- A presentation to provide preliminary and general information on Phase IV of the Joint Schools Construction Board's (JSCB) reconstruction project.

Additionally, Chair Kolkmeier noted that a proposed 2010 public meeting schedule had been included with the board documents and asked the Directors to review and provide feedback to BFSA staff relative to the dates given. The intent is to formalize the schedule at the Governance Committee meeting to be held December 9, 2009.

Following his opening remarks, he asked Secretary Arthur to call roll. Secretary Arthur called roll and determined that a quorum was present; the meeting commenced.

**Approval of the Minutes**

Chair Kolkmeier introduced resolution 09-38, "Approving the Minutes from July 29, 2009," and requested a motion to approve.

Motion by Mertz, second by Johnstone. Vote 8-0 to approve.

**RESOLUTION NO. 09-38**  
**APPROVING MINUTES FROM JULY 29, 2009**

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BE IT RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meeting on July 29, 2009, and ratifies and affirms resolutions numbered 09-28 through 09-37 that were approved July 29, 2009.

This resolution shall take effect immediately.

**BFSA Issues**

***Review of the 2009 Audited Financial Statements***

Chair Kolkmeier stated that the Audit, Finance and Budget Committee had met earlier in the day. It had passed a motion to send the financial statements for the year ended June 30, 2009 as audited by Lumsden & McCormick, LLP, to the full board with a recommendation for approval. He asked Director Mertz, who had chaired the committee meeting in the place of Committee Chair John Giardino, who was absent from the proceedings, to comment on the recommendations of the Audit, Finance and Budget Committee.

Director Mertz reiterated that the Committee had met earlier in the day and had passed a motion to send the Audited Financial Statements and related findings to the full board with a recommendation for approval. He additionally noted that the Committee had reviewed BFSA's prepared annual report and had passed a similar motion to recommend approval, with a caveat allowing for the Chair and the Executive Director to make changes prior to finalization, as deemed necessary for accurate completion.

Chair Kolkmeier noted that the Audit Partner, Ms. Donna Gonser, from Lumsden & McCormick, LLP, was in attendance. He asked her to provide any additional commentary to the board regarding the audit.

Ms. Gonser stated that she had no further comments to provide. She noted that a management letter had been provided to the board along with the audit.

Chair Kolkmeier introduced resolution 09-38, "Accept Audit Report and Approve Annual Report for Fiscal Year 2008-2009."

He asked for separate motions to approve the two items.

Motion by Townsend, second by Mertz. Vote 8-0 to approve the 2009 Audited Financial Statements.

***BFSA Annual Report***

Chair Kolkmeier referred to the Committee recommendation for the approval of the 2009 Annual Report and made the following points:

- BFSA is required to file an annual report along with the results of the year-end audit and several other documents.
- All of the additional documents have been approved or affirmed by the Board at the current or a previous board meeting.
- The report details BFSA's activities for the 2009 fiscal year and has been prepared following the format required by the New York State Office of the Comptroller and is the sixth iteration.

- The Annual Report consists of two main sections:
  1. a summary of BFSA’s 2009 accomplishments (a compilation of actions taken by the Board during fiscal year 2009), and
  2. a review of the City’s and Covered Organizations’ budgets and four-year financial plans (a compilation of the reports received by the members of the board for the June 10<sup>th</sup> meeting).

Chair Kolkmeier requested a motion to approve the annual report as presented in substantially its final form and to delegate to the Chair and the Executive Director the authority to make any necessary changes that may be required for its accurate completion.

Motion by Mertz, second by Collins. Approval 8-0.

**RESOLUTION NO. 09-39  
ACCEPT AUDIT REPORT AND APPROVE ANNUAL REPORT FOR FISCAL YEAR 2008 – 2009**

WHEREAS, Chapter 122 of the Laws of 2003, as amended, requires the Buffalo Fiscal Stability Authority (“BFSA”) to be subject to an annual financial audit performed by an independent certified public accountant selected by the BFSA; and

WHEREAS, the accounting firm of Lumsden and McCormick, P.C. was selected and they have conducted an audit of the BFSA’s accounts; and

WHEREAS, Lumsden and McCormick, P.C. have presented their Independent Auditors Report on BFSA’s Financial Statements for the Year Ended June 30, 2009; and

WHEREAS, the Public Authorities Accountability Act of 2005 (specifically, Section 2800 of the Public Officers Law) requires state and local public authorities to file an annual report with the State, detailing its operations and activities and other budgetary and financial data; and

WHEREAS, this report must be certified as accurate by the Executive Director of the BFSA; and

WHEREAS, much of this data and additional information is required by regulations promulgated by the State Comptroller; and

WHEREAS, the BFSA Staff has presented for approval a draft of the 2009 Annual Report in substantially its final form; and

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby accept the Lumsden and McCormick, P.C. Independent Auditors Report on BFSA’s Financial Statements for the Year Ended June 30, 2009 and the BFSA’s Annual Report for Year Ended June 30, 2009 as prepared by the BFSA Staff; and

BE IT FURTHER RESOLVED that the Annual Report, in substantially the form presented to this meeting, be and hereby is approved; and

BE IT FURTHER RESOLVED that Chair, the Executive Director and the Comptroller are hereby authorized to make such changes to the 2009 Annual Report in the form presented, as they may deem

necessary for its accurate completion; and

BE IT FURTHER RESOLVED, that the Executive Director is hereby authorized to release these Reports to the public and provide copies to the parties designated by Section 3871 of the BFSAs Act and Section 2800 of the Public Authorities Law; and

BE IT FINALLY RESOLVED, that the Executive Director is authorized to certify that financial statements filed with the above reports are accurate and correct.

This resolution shall take effect immediately.

### **City Issues**

#### ***Intermunicipal City/County Public Parks Agreement***

Chair Kolkmeier noted that Mayor Brown had recently announced his intentions for the City to retake the management of the City parks system and dissolve the fifteen-year Intermunicipal City/County Public Parks Agreement (the “Agreement”). The Agreement has been in place since 2004 when the City turned over management of the parks system to the County in an effort to consolidate costs and be more cost-beneficial for both municipalities.

He asked Principal Analyst Mike Kelly to address the board and provide a summary of the structure of the agreement.

Mr. Kelly addressed the board and provided the following information:

#### **Introduction**

- In 2003 at the time of BFSAs creation, the City of Buffalo was in a dire financial crisis; operational changes were necessary.
- In an initiative to create governmental efficiencies and reduce costs, the City and County negotiated the Intergovernmental Cooperation Agreement for operating, maintaining and managing all City parklands effective July 1, 2004.
- The agreement transferred management of the parks, not ownership, from the City to the County.
- The original agreement was to last 15 years through June 30, 2019. The County was to receive \$1.8 million from the City in addition to some smaller streams of revenue generated by the parks for things like permits, golf course fees, concessions, etc.

#### **Historical Review**

- The original agreement called for an annual payment of \$1.8 million from the City to the County.
- Erie County negotiated a separate agreement with the Buffalo Olmsted Parks Conservancy to operate, manage and maintain certain City parks (the Olmsted Parks).
- In a June 2008 letter to the City, the County indicated their intention to opt out of the Agreement effective June 13, 2009.
- The City responded to the County’s letter indicating that the County’s reasons for terminating the Agreement were invalid and that the City expected the County to maintain operations for at least another year. At this point the City and County began negotiations to determine the fate of the 2004 agreement and who would operate and manage the parks.
- In May 2009, just before the prime parks season was set to begin, the City and County announced a \$3.5 million agreement that kept parks operations with the County through December 31, 2009.

- The City’s approved 2010 budget includes \$6.0 million for park related expenditures. Additionally, each of the out years of the City’s 4-year financial plan also includes \$6.0 million for park operations through 2013.
- Out of the \$6.0 million the City has budgeted for parks in 2009-10, \$3.5 million is designated for the County for the period July 1 through December 31, 2009.
- After this \$3.5 million expenditure, the City will have \$2.5 million remaining for parks management from January 1, 2010 to June 30, 2010. Last week the City informed the County that it was retaking control of the parks management and that the 2004 Intermunicipal Cooperation Agreement was being severed.

**Review of BFSA Analysis as Originally Presented at the March 2009 Board Meeting**

- The average operating costs over the 6 year period from 1999 to 2004 was \$5.5 million.
- Personal service costs, which are staff related expenses, averaged \$4.8 million and made up the lion’s share of parks spending. Other parks related spending averaged about \$.6 million.
- The City carried about 90 full time employees to operate the parks. This figure does not include seasonal help, which typically spikes during the summer months when parks usage reaches its peak.

Director Arthur asked how many parks were involved with the agreement. Mr. Kelly replied that it was around 180.

Chair Kolkmeier asked if the operating costs incurred included capital expenditures. Mr. Kelly replied that, under the terms of the Agreement, capital costs were still incurred by the City with maintenance costs the County’s responsibility. He deferred to the Mayor for confirmation.

Mayor Brown confirmed that the figures provided do not include capital expenditures.

**BFSA Analysis – County Costs (continued)**

- From 2004 to 2008, the average yearly expenditure for parks operations by the County averaged \$4.6 million or nearly \$900 thousand less than the City’s average costs.
- Personal services costs for the County averaged about 74% of parks related spending, which is well below what the City was devoting to personal service costs related to parks management.
- The County carries a far larger staff then the City did. This is largely due to two points:
  1. The County also maintains a county-wide system of parks outside of the City.
  2. Roughly 195 employees include full-time, part-time and seasonal employees.

Director Johnstone requested that the categories be “written down” in future presentations because some of the costs are not transferable.

Director Townsend noted that the Olmsted Conservancy raises “about half” of total operational cost of maintenance through private donations and clarified that these funds had not been included in the City or County’s historic expenditures shown in the presentation. She asked whether or not Olmsted had existed prior to the Agreement.

Mr. Kelly explained that Olmsted had been in existence prior to the Agreement as a “Friends of the Olmsted Parks” not-for-profit. After the Agreement and subsequent arrangement between the County and Olmsted, the role of the entity greatly expanded.

County Executive Collins injected that, in his discussions with the Chair of the Board of the Olmsted

Conservancy, Mr. David Colligan, he has referred to the pre-agreement role of the entity as one of an advocacy group.

Director Townsend noted that if the arrangement was to be severed with Olmsted, then these privately-raised funds would likely become unavailable to the City. Mr. Kelly concurred that this was a reasonable expectation.

### **Closing**

- BFSA has not been briefed on the City's financial plan to retake the operations and maintenance functions of the City's park system. BFSA staff has some initial estimates as to what this may cost; the Board is interested in seeing the City's financials relative to the operation of the parks.

Following the presentation, Chair Kolkmeier stated that the term being used is "City Parks," while a more apt term is "regional assets" as the splendor of the parks draws visitors to them from across Western New York. He stated that in the current economic climate, citizens are looking toward regionalism, down-sizing local governments and consolidating services to utilize cost-savings through economies of scale. He asked County Executive Collins how this change which reverts to the system in place in 2004, benefits the citizens of western New York and the City of Buffalo.

County Executive Collins replied that his management style is guided by an underlying philosophical principle. Local governments can make better decisions for themselves than a larger, regional government. The City of Buffalo will make better decisions for itself than the County of Erie, who, in turn, will make better decisions for itself than [New York State capitol] Albany.

The County Executive continued that one year ago when the Town of Clarence came to the County and asked to take ownership (sans County subsidies) of Beeman Creek Park, located within the Town of Clarence, the decision was made to allow this, consistent with this philosophical principle. The duly elected officials of the town had decided that this transfer was in the best interests of the town's citizenry, therefore the transfer was warranted. When the Mayor of Buffalo came to the County with the intent that they retake maintenance of the City-owned parks, the decision was made to assist with this as the Mayor of Buffalo will make better decisions for its parks than the County.

If the County were to dictate to the City what is best for the management of its parks, it would be akin to Washington, D.C's top-down management style with the States and Albany's top-down management style with smaller governmental entities across New York.

Director Arthur asked if BFSA would be holding a public hearing on the issue.

Chair Kolkmeier replied that the necessity for a public hearing has not been determined. The details of the transfer have not yet been made available to the BFSA; it is premature to determine the need of a hearing before details are provided. Further, it has yet to be determined whether or not the transfer will result in a budget modification from the City for BFSA to consider. The information provided is preliminary and should be considered informational.

Director Johnstone explained that a budget modification is likely as the operational transfer to the City will result in the addition of "either 65 or 196 additional" workers. Regardless of the board's likes or dislikes of the transfer, the BFSA's duty will be to examine the issue solely within the context of the financial plan. It should be noted that the City will not have access to lower cost "welfare-to-work" workers who are currently being utilized by the County. A detailed listing of the cost implications will

need to be examined by the board.

Chair Kolkmeier expressed his understanding that the City's retake of maintenance operations would be within the context of the current financial plan and therefore, no budget modification would be required. He asked Mayor Brown to direct his staff to provide this material and present it at the November 4<sup>th</sup> Board Meeting.

Mayor Brown agreed to direct his staff in this fashion. Further, he added his thanks to the County Executive for his cooperation with the City regarding the dissolution of the Agreement. Both elected officials had inherited the Agreement upon their election to their respective offices. The Agreement was silent on many issues or often times ambiguous. Both officials have received many complaints from the citizenry regarding the maintenance of the parks. Corrective measures have been implemented; significant strides have been undertaken to address the citizenry's concerns through an "interim agreement" between the two entities.

The City of Buffalo has substantially increased its funding to the parks system with the current financial plan. In the four-year plan, \$6 million has been budgeted for the operations, maintenance and management of the parks. The expectation is that the City will not exceed this amount. Additionally, City capital resources will be made available to purchase and upgrade equipment; necessary capital improvements will continue to be funded, as has been the City's ongoing responsibility throughout the Agreement. Positive revenues through fees, rentals, and others are expected but not factored into the cost analysis.

Respective to Director Johnstone's comment regarding the number of City park employees, Mayor Brown stated that the expectation will not be to have the same number as the County. Workforce will mirror the "pre-Agreement" level of employees and be managed under the Department of Public Works, with a new deputy director position likely created to handle day-today management of parks personnel.

Part of the rationale to retake the maintenance of the parks is that there are still a number of complaints from citizens blaming the County, especially within the maintenance of the "pocket-parks." The County has done a wonderful job with maintenance, especially in the current year with an increased cutting season. There is an expectation that the City can improve the delivery of services provided. Issues pertinent to the City which will now be able to be addressed are increased program activities for youths, adding a revenue-generating concession stands to parks, optimized user-hours for the parks, especially for public pools on the weekends.

Currently, under the pre-existing Agreement, the City does not have a forestry department. The City of Buffalo is "the City of the Trees" and often times there are needs for tree-trimming, stump removal or other services. The County has been as receptive to the needs of the City, but having the City provide these types of services will improve the timeliness of service delivery. Additionally, the City wishes to receive greater input regarding areas requiring capital expenditures. This shift will afford the City greater feedback from the citizenry relative to this issue. Additionally, the City wishes to simplify permit process for groups wishing to use the parks for special occasions. Currently, there is a tri-party process in place, while the goal is to streamline this process to make it easier for entities to complete the process. Most importantly, the City wishes to reclaim ultimate authority over the conditions of the parks.

In closing, Mayor Brown affirmed the City's intent to continue a partnership with the Olmsted

Conservancy with a new agreement. Speculation has been that the City would not seek a role similar to the current agreement between the County and Olmsted. This speculation is unqualified. The City is hopeful that the Olmsted Conservancy will continue to participate in the process in a meaningful way.

Chair Kolkmeier asked Mayor Brown what virtues the Olmsted Conservancy brings to the process. Mayor Brown replied that the role of Olmsted has grown from that of advocacy to one of operational maintenance. They bring outside fundraising to the parks. One area which will need to be clarified, however, is the level of outside funding Olmsted provides. Some of the funds included in Olmsted's tabulation of fundraising come from governmental sources, chiefly the County and the City. The City will seek access to the documentation of privately raised funds to quantify the amounts from private donor and that of municipalities.

Director Johnstone noted that the Mayor will need a "transition plan" to retake parks maintenance and requested a cost analysis of this operation as well. Mayor Brown agreed to have staff provide this material along with the previously agreed upon data.

Director Arthur stated that individuals or entities can be charged an additional fee by the Olmsted Conservancy for usage of the parks. It does not seem fair that a resident who is already paying City and/or County taxes for the maintenance of the parks would be charged this additional fee. He asked Mayor Brown to include this data along with the other requested data.

Director Townsend noted that in 2003/2004, at the creation of the Agreement, the rationale between the parties was that one set amount of overhead, one pool of equipment, workers who would include "welfare-to-work" recipients and a consolidation of operations to one entity would save money. A number of reports provided by governmental officials, think-tanks and research entities have consistently concluded that New York State has a very fragmented set of local governments. Local government in New York State is very expensive. This has been the impetus of some individuals such as State Attorney General Andrew Cuomo to examine the issue and allow for consolidations of taxing authorities to realize cost-savings for the respective citizenry. Localities are being encouraged to examine their situations and determine where consolidations can be made to provide better services and be more cost-effective.

Further, she expressed her skepticism with the Mayor's intent to improve services with the same level of funding and less staff. Realistically, there will always be criticism of parks maintenance by individuals regardless of how much or how little is spent. It may be advisable to set a "constant resource level" and ask what can be had at this funding level and establish the optimal level of service. The City may not have access to as much privately raised monies and will not have access to lower-cost "welfare-to-work" recipients, these will be losses.

County Executive Collins stated that he agreed "superficially" with Director Townsend's comments. The issue is, "what is success and what is failure. If there is failure, what are the reasons for failure and how do we turn it into success?" We should not be debating "whether to lose the football game by ten or twenty-seven points but rather how do we win the football game?" This debate has not occurred. Our taxation burden is what it is because New York State has a Medicaid program which costs \$2,400 per State resident. In California, the per capita burden is \$1,000 while in Texas the per capita burden is \$870. Individuals can get medication with a \$1 co-pay in NYS. Further, New York State is burdened by laws such as the Taylor Law which grants negotiating leverage to public sector unions away from management to create unsustainable lucrative public union contracts, which further adds to the high tax burden. This combined with the defined-benefit pension plan and retiree healthcare is expensive and

unsustainable.

Career politicians such as Attorney General Andrew Cuomo are trying “to distract the public from the right debate.” People are focusing on regionalism and downsizing which will only bring a modicum of savings. The real debate should be to address the more major cost-drivers, listed earlier.

Chair Kolkmeier referenced a remark by Mayor Brown wherein he stated, “We’ve made significant strides to improve the management and maintenance [of the parks].” Chair Kolkmeier stated that, “We’ve made the strides. We can continue to move forward making these strides, but now we are going to change the game-plan.” This is a real shame for the citizens of Buffalo and the residents of the area. The fear is that with the City’s retake of the parks, these strides will ebb and the level of service delivery will revert to the level of that provided in 2003, prior to the Agreement.

Mayor Brown rebutted that the expectation is not to go backwards but to continue the strides forward and provide better service delivery. There are outstanding community concerns that the City of Buffalo is most equipped to respond to. The City of Buffalo is better managed overall than it has been in a “long, long time.” For example, with the current 311 system, the City is better able to learn of complaints, quantify them and address them. This is a new tool not previously available. The CitiStat accountability and management system is now available; the cost of service delivery has been trimmed as a result of the use of these new management tools. The Administration is confident that the management of the parks by the City will be superior to the management of the parks prior to the Agreement.

The Mayor took a moment to recognize the committee created to work on the issue, some of whom were in attendance. He recognized the following individuals for their hard work: Commissioner of Administration, Finance, Policy & Urban Affairs, Ms. Janet Penksa; Budget Director, Ms. Donna Estrich; Department of Public Works Commissioner, Mr. Steve Stepniak; an attorney with the Law Department, Mr. Brendon Mahaffey, who will be the principle negotiator with the Olmsted Conservancy; Deputy Mayor, Mr. Steven Casey; and, Director of Special Events, Ms. Sue Gonzalez.

County Executive Collins stated that he, “somewhat respectfully disagrees with the rationale” behind the development of the Agreement. In 2003, then County Executive Giambra was desperate for a political win on the regionalism front, at any cost. At the time, the City was in a more difficult financial situation and the County was “pretending to be flush with cash.” The deal offered to then Mayor of Buffalo Anthony Masiello was to, “take on the parks and only charge \$0.30 on the dollar.” This was done in desperation and doomed to failure from the beginning. This is similar to the deal worked with the City regarding the Holding Center. This is currently being renegotiated as the Parks Agreement had been. It was nothing more than “regionalism taking over common sense” and was a bad deal for all involved.

Director Townsend noted that in her roles as the Budget Director for the City of New York and as a long-time member of the BFSAs, she has been “on the front-lines” on the fight for cost-containment in areas noted by the County Executive such as pension/ OPEB costs. The issue of the Parks Agreement is separate. The focus should be how to best provide service delivery at a predetermined funding level.

Director Mertz interjected that, as a member of the Board who lives by a park, he has enjoyed it for the last two decades. Since the Agreement, there has been a significant improvement. The Olmsted Conservancy has done a very fine job. As a resident of the City of Buffalo, the hope is to keep Olmsted involved in the process.

Director Mesiah asked if the issue of concern regards the maintenance by the Olmsted Conservancy or the administration of the Parks. The dialogue seems to be, “Let’s save the Conservancy instead of let’s look at a better way to manage the parks.” At this point, the concern for the removal of the Conservancy from the process is premature, per the Mayor’s sentiments in support of their continued involvement.

***Dialogue on County Contract Negotiation – County Executive Collins***

Chair Kolkmeier asked County Executive Collins to espouse on contract negotiations within the County.

County Executive Collins replied and stated that the strategy followed by the County is not necessarily transferable to the City. He made the following points:

- Several years prior following the advent of GASB 45 and the implications therein, the County decided that it would need to aggressively address OPEB issues, chiefly retiree health insurance. The decision was made to cut off retiree health insurance for all new hires.
- Roughly 1/3 of the \$750 million liability is for new hires. Therefore, eliminating health care for new hires would save approximately \$250 million.
- The unions were told that any new collective bargaining agreement would not include retiree health insurance. Additionally, health insurance for current employees would need to include cost sharing, more in-line with the private sector. Health insurance which is fully paid for by the employer is not valued as highly by employees because the amount of compensation is a less tangible amount.
- There are several large unions within the County which have not had new contracts for a few years (e.g., Teamsters five years, ASCFME four years). Under the New York State Taylor Law, the contract provisions continue ad infinitum, until employees reach the highest step.
- Other benefits are less static and more negotiable. These benefits include such things as “summer hours,” personal days, holidays, etc. and “all are on the table.”
- The County is signing contracts which are “historic in length.” The County is paying 3% raises now, which pays a little bit more now but will be less thirty years from now upon employee retirement.
- The County has proven that the unions, with the possible exception of CSEA, will give up retiree health insurance for new hires for more immediate compensation. This will yield greater savings for taxpayers in the long run.
- The successes realized by the County show that the model used is effective.

Chair Kolkmeier thanked the County Executive for his comments. He had noted that this is the type of discussion which will be provided at future meetings. At past meetings, Directors had requested that recommendations be prepared and submitted to the City and the Covered Organizations, specifically as it pertains to collective bargaining units. Currently, staff is examining the BMHA’s labor contracts and gathering data for analysis with other housing agencies across the state as well as the country. The findings of this analysis will be forthcoming in the near future.

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

### ***Phase IV Overview***

Chair Kolkmeier advanced the agenda to the next item, a discussion of the JSCB's Phase IV of the overall school reconstruction project. A Special Meeting of the Board has been called for October 19<sup>th</sup> at 12PM to review and approve the financing. He asked Executive Director Mongold to provide a historic overview of the JSCB for the Board.

Ms. Mongold addressed the Board and provided the following information:

### **General Information**

- JSCB was created by resolution of the Buffalo Board of Education, Buffalo Common Council and an amendment to the Buffalo City Charter
- Leadership includes:
  - Mayor of Buffalo
  - Buffalo Comptroller
  - School Superintendent
  - 1 Designee from the Buffalo Common Council
  - 2 Board of Education Designees

The program includes:

- Comprehensive redevelopment of physical schools
- 41 out of 59 schools improved (thru Phase IV)
  - 5 phases/ 10 years
  - \$854 million dedicated to date
  - All 5 phases  $\leq$  \$1.35 billion

Phase IV Summary:

- Estimated project costs = \$293 million
  - 3 components
    - Schools - \$223 million/ 10 schools
    - District-wide technology - \$54 million
    - District-wide energy performance - \$16 million

### **State Reimbursement**

- Maximum cost allowance (MCA)
  - State Department of Education sets "aidability" of projects
  - "Aidability" varies depending on project. For example, reduced or no reimbursement for hallways, athletic facilities, bond issuance costs
  - Estimate building aid for Phase IV = 95%

### **General Structure Overview**

- Bond Issuer → ECIDA
- Ground Lessee → ECIDA
- Ground Lessor → Buffalo School District
- Installment sale → from ECIDA to District
- Purchase payments = Amount of bond payments (Principal & Interest)
- Lease term = bond term

## **Master Construction Agreement**

- JSCB contracted with LP Ciminelli, Inc., to manage the reconstruction program
  - Determines costs, designs, specifications & timing
  - Works in conjunction with the District
  - Selected overall design architect (Cannon Design)
  - Subcontracts architect firms

LP Ciminelli, Inc. oversees the following

- Bidding process
- Supervision of execution of work
- Diversity compliance

Following Ms. Mongold’s presentation, Chair Kolkmeier asked if any Directors had any questions.

Director Arthur stated, “According to the minutes of our last meeting, this will be the third meeting where I have asked whether we can have a public hearing on the Joint Schools Construction project. Will the meeting held on the 19<sup>th</sup> be open to the general public for comments?”

Chair Kolkmeier stated that it had been his understanding that it is not the responsibility of the BFSA to hold a public hearing on this issue. If it were to be held, it would be held by the District.

Director Arthur replied that it was not necessary for BFSA to hold a public hearing, but a privilege granted to the Board to do so, if it chooses to.

Ms. Patti Letteiri, BFSA’s Outside Legal Counsel with Harris Beach, PLLC, addressed the Board. She stated that the meeting scheduled for October 19<sup>th</sup> will be open to the public. There has been no determination of need to hold a public hearing; there is nothing requiring this action.

Director Arthur asked for confirmation that there was nothing to neither prohibit nor require such a hearing. Ms. Letteiri replied that this was her understanding but would confirm this. Director Arthur stated that information received by the Board has not delved into the details of the contact, specifically the commitment of Ciminelli in the Master Construction Agreement. BFSA is the “board of last result.” LP Ciminelli has “skirted the issue” with respect specifically toward the required diversity goals. He referenced a letter received from an area minority-owned architecture firm asserting that only one or two minority-owned firms have been used through the first three phases of the design by LP Ciminelli. An online search for a JSCB website did not yield substantive results. Therefore, basic information regarding diversity compliance is not readily available. Additionally, the Black Chamber of Commerce has experienced similar unsuccessful attempts to secure this information. Subsequently, there needs to be a public hearing why LP Ciminelli has not made this sort of information more readily available.

Additionally, he noted that there is a flaw in the enabling legislation which does not allow for an enforcement mechanism to force firms to meet expected diversity goals. It is therefore incumbent on the BFSA to address these types of issues prior to affirming the financing of Phase IV.

Mayor Brown replied that he had received the letter as well. As Mayor, he is ex officio Chair of the JSCB board. All meetings of the JSCB are public; members of the public are free to attend and review

the progress toward meeting all of its goals, including diversity goals. JSCB is in compliance with all minority and woman professional workforce goals.

Director Johnstone asked for a legal opinion from Ms. Letteiri. She stated that she had no objection to holding such a hearing if it was “in the charter” of the BFSA. However, she had a problem with entities such as BFSA working beyond the permissions of their respective charters. She asked Ms. Letteiri to review BFSA’s charter and confirm that this sort of action is within the constraints of the enabling legislation.

Ms. Letteiri stated, “I would council this Board that, to the extent that any discussion, or hearing, or vote, or action taken by this Board, that goes beyond the preview of the charter and the goal and responsibility here which is to take action here as to the fiscal constraints posed or the fiscal decisions that are going to be imposed by taking on this project that would be what you are limited to here. As to whether the underlining project meets certain goals set forth by the Board to oversee the project. It would be beyond the scope of what is [allowed by the charter]. I can certainly provide you with the specific reference to the language of the Act which addresses this.”

Director Arthur stated that he had a physical copy of the BFSA bylaws on hand and asked Ms. Letteiri to reference the language to substantiate her opinion.

Chair Kolkmeier directed counsel for a ruling on the issue “outside of the meeting” as to not prolong the proceedings.

Director Townsend addressed the issue. She stated that members of the community have an opportunity to express their concerns publicly at the annual forum. BFSA’s charge is strictly fiscal. Concerns outside of the scope of BFSA’s authority should be addressed at public meetings of the respective entities.

Director Arthur asserted that the BFSA board “bounces around” and only gets involved “when we want to get involved. It seems to me that whenever an issue comes up that involves the minority community we try to ignore it. I think that this is wrong. We feel that we don’t have to answer to anyone. This board can say or do whatever it wants to do without any oversight. If a citizen wants to come before the board with a concern, then they should be allowed to do so.” BFSA should not approve the financing unless the entity meets its contractual obligations.

Chair Kolkmeier referred to the annual public hearing and stated, “The key point is that it addresses the budgets of the BFSA, the City of Buffalo, the Covered Organizations and the JSCB. It is an opportunity for people to ask questions.” The poor attendance of the public forum is what has given the Board pause as to its usefulness; it is one of the methods by which people can publicly express their concerns.

Director Arthur referred to the public forum as “a farce” and reasserted his previous position the BFSA Board should not hold a public hearing on the budget until it is finalized by the Common Council.

Chair Kolkmeier rebutted that Director Arthur was, “cutting at straws and getting into semantics.” The material reviewed at the hearing is a proposed budget submitted by the Mayor and the other entities.

Director Townsend asked, “Doesn’t it make sense for the public to come here to comment on the budget before the Council has completed action on it?”

Director Arthur stated, “No, it doesn’t because [people] can not comment on a budget that they do not what is in it.”

Chair Kolkmeier moved to close debate.

Ms. Letteiri stated that counsel had been directed by the Board to review the powers of the Board with respect to public hearings and the authorization of the JSCB financing.

Director Arthur offered a copy of the enabling legislation.

Chair Kolkmeier asked counsel to get back to the Board within a week.

### **New Business**

#### ***Transition from control to advisory period***

Chair Kolkmeier asked if any member had anything additional to discuss.

Director Arthur referenced an earlier discussion regarding BFSAs transition from a “hard to soft control board.” He requested a legal opinion for “the steps that we will have to go through” for such a transition.

Chair Kolkmeier directed counsel to make a presentation on this issue, “at either the November or December meeting, whenever we have the time.”

#### ***Resignation of Chair Kolkmeier***

Chair Kolkmeier stated that he has been a member of the Board for the last two years. He has announced to the Governor his intention to step down as Chair by October 31<sup>st</sup>. He thanked the staff and members of the Board for their hard work and dedication. “There remains considerable challenges to address in this community in order to secure a more fiscally sound future and I continue to hope and pray for all of you.”

### **Adjournment**

Chair Kolkmeier asked for a motion to adjourn which was carried unanimously. The meeting adjourned at 2:45 PM.

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