

BUFFALO FISCAL STABILITY AUTHORITY

Meeting Minutes

July 21, 2010

The following are the minutes of the meeting of the Board of Directors of the Buffalo Fiscal Stability Authority (“BFSA”) held on Wednesday, July 21, 2010, in the Buffalo & Erie County Central Public Library Auditorium. The meeting was called to order at 1:00 PM.

Board Present: Arthur, Brown [proxy], Collins, Johnstone, Messiah and Olsen

Board Excused: Floss, Giardino & Townsend

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

Additionally Present: Mr. Doron Bar-Levav Esq., Legal Counsel with Harris Beach, PLLC

Opening Remarks

Chair Olsen called the meeting to order. He noted that the meeting would be brief and summarized the meeting’s agenda as follows:

- Efficiency Grants - BFSA will consider an efficiency grant approval request from the City of Buffalo (the “City”);
- BFSA Administrative Issues – BFSA will consider the Governance Committee’s recommendations to approve various policies and guidelines;
- Committee Reconstitution – BFSA will consider a resolution to reconstitute its Audit, Finance & Budget Committee;
- Legal Summary - BFSA’s legal counsel from Harris Beach, PLLC, Mr. Doron Bar-Levav, Esq., will provide a summary of the actions needed for the Board to declare itself to have entered to an Advisory Period; what future events could trigger a new Control Period; and, what the role of the Board is during the anticipated advisory period, per the enabling legislation;
- Privilege of the Floor – BFSA will invite attending members of the public to address the Board regarding any items discussed during the day’s meeting.

Chair Olsen concluded his summary of the meeting’s agenda and asked Secretary Arthur to facilitate a roll call. Director Arthur called role and confirmed a quorum. The meeting commenced.

Note: City of Buffalo Commissioner of Administration, Finance, Policy and Urban Affairs, Ms. Janet Penksa attend the meeting at the behest of Mayor Byron W. Brown, pursuant to §3853 of the BFSA Act. Vice-Chair Alair Townsend, Director Floss and Director Giardino were excused from the proceedings.

Approval of the June 9th and June 22nd Meeting Minutes

Chair Olsen introduced Resolution No. 10-28, “Approving Minutes from June 9, 2010 and June 22, 2010.”

Motion by Arthur, second by Messiah.

RESOLUTION NO. 10-28
APPROVING MINUTES FROM JUNE 9, 2010 AND JUNE 22, 2010

BE IT RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meetings on June 9, 2010 and June 22, 2010.

BE IT FURTHER RESOLVED that the Buffalo Fiscal Stability Authority ratifies and affirms Resolution No. 10-15 that was approved on June 9, 2010.

BE IT FURTHER RESOLVED that the Buffalo Fiscal Stability Authority ratifies and affirms Resolution Nos. 10-16 through 10-27 that were approved on June 22, 2010.

This resolution shall take effect immediately.

Approved July 21, 2010

Vote 6-0 to approve.

City Issues

Efficiency Grant Request

Chair Olsen advanced the agenda to the next item for consideration: the Mayor's request to approve the use of efficiency grant funding for a City Land Use Plan and Zoning Initiative. He noted, "that the New York State Division of the Budget recently gave the go-ahead for the approval of City projects to be funded with efficiency grant dollars. The BFSA does not hold these funds but acts as a pass-through organization. The City must be reimbursed for its expenditures." He asked Executive Director Jeanette M. Mongold to provide a summary for the Board.

Ms. Mongold addressed the Board and provided the following summary of the Efficiency Incentive Grant Program request:

Introduction

- Pursuant to the BFSA Act and in conjunction with the New York State Efficiency Incentive Grant program, the City is required to develop and submit a plan to BFSA for achieving recurring savings through innovations and reengineering.

Summary

- Mayor Bryon W. Brown had submitted a current plan to the BFSA including an outline of such plan. The current plan requests the approval for use of \$1.4 million of New York State Efficiency Grant Funding to be used for the development of a City-Wide Land Use Plan and Zoning Initiative;
- The original grant allocation was \$25,000,000 over a three year period;
- The first allocation (2006-07) of \$10,000,000 has been completely budgeted with projects previously approved. The remaining allocation was reduced by NYS by \$4.9 million, for a revised total allocation of \$20.1 million.
- There are \$3.2 million of remaining grant funds available that have not been committed to a specific project, excluding this \$1.4 million request. BFSA has had extensive conversations with the City's Department of Administration, Finance, Policy and Urban Affairs regarding planning for the use of these funds and encourage the plans to be finalized and submitted as soon as possible, in particular in light of possible mid-year state cuts.

Closing

- The Mayor’s City-Wide Land Use Plan and Zoning Initiative appears to meet the guidelines for use of the efficiency incentive grant funds;
- BFSAs staff recommends the approval of this request.

Motion to approve by Arthur, second by Brown [proxy].

RESOLUTION NO. 10-29
APPROVAL OF EFFICIENCY INCENTIVE GRANT REQUEST

WHEREAS, in 2006, New York State amended the Buffalo Fiscal Stability Authority Act (“Act”) to add in a new Section 3857-A, which provides for Efficiency Incentive Grants to the City of Buffalo (“City”); and

WHEREAS, according to Section 3857-A of the Act, the City “shall develop and submit to the Authority a plan for achieving recurring savings through innovations and reengineering” ; and

WHEREAS, New York State has informed the Buffalo Fiscal Stability Authority (“BFSAs”) that twelve million dollars (\$12,000,000) in 2007-08 Efficiency Incentive Grants will be made available to the BFSAs, for City use; and

WHEREAS, the City of Buffalo previously requested approval and use of five million five hundred thousand dollars (\$5,500,000) in 2007-08 Efficiency Incentive Grant funds; and

WHEREAS, New York State reduced the City’s 2007-08 Efficiency Incentive Grant allocation by three and seven-tenths percent (3.7%), leaving the City with six million two hundred fifty-nine thousand five hundred dollars (\$6,259,500) in Efficiency Incentive Grants for City use; and

WHEREAS, in 2009-10 New York State further reduced the City’s 2007-08 Efficiency Incentive Grant allocation by fifty percent (50%) effective for fiscal year 2010-11, leaving the City with three million one hundred twenty-nine thousand seven hundred fifty dollars (\$3,129,750) in Efficiency Incentive Grants for City use; and

WHEREAS, the City has submitted to the BFSAs a plan to utilize one million four hundred thousand dollars (\$1,400,000) in Efficiency Incentive Grant monies for a “City Land Use Plan and Zoning Initiative”; and

WHEREAS, BFSAs staff has studied the City’s Efficiency Incentive Grant proposal and finds that the proposal is a reasonable initiative toward achieving efficiencies, increasing revenues or enhancing the delivery of certain City services.

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority hereby approves the City of Buffalo’s request for \$1,400,000 in Efficiency Incentive Grants to fund the following initiative in the following amounts:

City Land Use Plan and Zoning Initiative	\$1,400,000
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This resolution shall take effect immediately.

Chair Olsen added that there was an additional efficiency aspect involved. He stated, “there is a serious lack of congruity between the City’s master plan and zoning that raises all kinds of legal issues as well that could result in fairly significant litigation costs. I think that [approval of the request] is more than appropriate and overdue.”

Vote 6-0 to approve.

BFSA Issues

Review of Mission Statement, Procurement Guidelines, Prompt Payment Policy, Property Disposal Guidelines, Investment Guidelines & Whistleblower Policy

Chair Olsen advanced the agenda to the following: consideration of the Governance Committee’s recommendations to approve the Mission Statement, the Procurement Guidelines, the Prompt Payment Policy, the Property Disposal Guidelines, the Investment Guidelines and the Whistleblower Policy. He noted that the Code of Ethics would be considered at the next meeting of the Governance Committee with a subsequent recommendation on action. He asked for a motion to consider the resolutions simultaneously.

Director Arthur offered a motion to accept the recommendation of the Governance committee and approve the various policies and guidelines in one action. The motion was duly seconded by Mayor Brown [proxy].

RESOLUTION NO. 10-30
REAFFIRM BFSA MISSION STATEMENT

WHEREAS, Chapter 122 of the Laws of 2003, as amended, created the Buffalo Fiscal Stability Authority (“BFSA”); and

WHEREAS, BFSA’s Board of Directors has undergone a transition in its member composition since BFSA was first created; and

WHEREAS, in the interest of ensuring BFSA’s current Board of Directors is familiar with BFSA’s mission statement as contained in the BFSA Act; and

WHEREAS, BFSA’s Board of Directors originally adopted the BFSA’s Mission Statement on September 24, 2007.

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby acknowledge that the following portions of Chapter 122 of the Laws of 2003 constitute its mission statement:

“The city budget must be balanced and economic recovery enhanced. Actions should be undertaken which preserve essential services to city residents, while also ensuring that taxes remain affordable... It is hereby further found and declared that a control and advisory finance authority should be established to oversee the city’s budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings through debt restructuring; to finance short-term cash flow or capital needs; and, if necessary, to develop financial plans on behalf of the city if the city is unwilling or unable to take the required steps toward fiscal stability.”

“The legislature further finds and declares that maintenance of a balanced budget by the city of Buffalo

is a matter of overriding state concern, requiring the legislature to intervene to provide a means whereby: the long-term fiscal stability of the city will be assured, the confidence of investors in the city's bonds and notes is preserved, and the economy of both the region and the state as a whole is protected."

This Resolution shall take effect immediately.

RESOLUTION NO. 10-31
APPROVING PROCUREMENT POLICIES FOR CERTAIN CONTRACTS

WHEREAS, the Buffalo Fiscal Stability Authority ("BFSA") was formed by Chapter 122 of the Laws of 2003 to "oversee the city's budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings through debt restructuring; to finance short-term cash flow or capital needs; and if necessary, to develop financial plans on behalf of the city if the city is unwilling or unable to take the required steps toward fiscal stability"; and

WHEREAS, the BFSA requires professional assistance in performing its mission; and

WHEREAS, the BFSA is a public authority of the State of New York and as such is governed by certain state laws that specify the method for the procurement of certain services; and

WHEREAS, in order to comply with state law it was necessary for the BFSA to adopt Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts; and

WHEREAS, in Resolution 03-36 adopted October 7, 2003 and in Resolution 09-31 adopted on July 29, 2009, the BFSA adopted procurement guidelines as required by law; and

WHEREAS, in order to further comply with state law, it is necessary for the BFSA to review the adopted procurement guidelines at least annually; and

WHEREAS, the BFSA Governance Committee reviewed and approved the proposed procurement guidelines on July 21, 2010; and

WHEREAS, upon reviewing this Procurement Policy BFSA determined that amendments were necessary to delete obsolete references, update to current information, clarify phrases, and provide continuity among policy directives; and

WHEREAS, the amendments noted above do not change the content or subject matter of this policy.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority hereby adopts the Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts that are attached to this resolution.

This resolution shall take effect immediately.

RESOLUTION NO. 10-32
READOPTING THE PROMPT PAYMENT POLICY STATEMENT

WHEREAS, Chapter 122 of the Laws of 2003, as amended, created the Buffalo Fiscal Stability Authority (“BFSA”) to provide financial oversight and budgetary control over the City of Buffalo and other Covered Organizations; and

WHEREAS, as a public authority, the BFSA is subject to regulation by the State of New York, either in the form of rules and regulations promulgated by the State Comptroller or legislation approved by the State Legislature and signed into law by the Governor; and

WHEREAS, §2880 of the Public Authorities Law requires public authorities to promulgate rules and regulations detailing its prompt payment policy and to periodically review the same; and

WHEREAS, the BFSA has developed and implemented a prompt payment policy statement to comply with this requirement; and

WHEREAS, the BFSA adopted its prompt payment policy statement on September 28, 2006 by Resolution No. 06-61; and

WHEREAS, the BFSA readopted its prompt payment policy statement on September 24, 2007 by Resolution No. 07-45; and

WHEREAS, the BFSA readopted its prompt payment policy statement on August 20, 2008 by Resolution No. 08-33; and

WHEREAS, the BFSA readopted its prompt payment policy statement on July 29, 2009 by Resolution No. 09-32; and

WHEREAS, upon reviewing the Prompt Payment Policy, BFSA determined that amendments were necessary to delete obsolete references, update to current information, clarify phrases and provide continuity among policy directives; and

WHEREAS, the amendments noted above do not change the content or subject matter of this Prompt Payment Policy.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority does hereby affirm its Prompt Payment Policy statement.

This Resolution shall take effect immediately.

RESOLUTION NO. 10-33
REAFFIRMING PROPERTY DISPOSAL GUIDELINES

WHEREAS, Chapter 122 of the Laws of 2003, as amended, created the Buffalo Fiscal Stability Authority (“BFSA”) to provide financial oversight and budgetary control over the City of Buffalo and other Covered Organizations; and

WHEREAS, §2896 of the Public Authorities Law requires public authorities to adopt comprehensive guidelines which detail the authority’s operative policy on the disposal of personal property valued in

excess of five thousand dollars; and

WHEREAS, the BFSA has developed and implemented property disposal guidelines to comply with this requirement; and

WHEREAS, the BFSA Board of Directors approved the property disposal guidelines by Resolution No. 06-69 on November 9, 2006; and

WHEREAS, the BFSA Board of Directors readopted the property disposal guidelines by Resolution No. 07-34 on September 24, 2007; and

WHEREAS, the BFSA Board of Directors readopted the property disposal guidelines by Resolution No. 08-34 on August 20, 2008; and

WHEREAS, the BFSA Board of Directors readopted its property disposal guidelines by Resolution No. 09-32 on July 29, 2009; and

WHEREAS, upon reviewing the Property Disposal Policy, BFSA determined that amendments were necessary to delete obsolete references, update to current information, clarify phrases and provide continuity among policy directives; and

WHEREAS, the amendments noted above do not change the content or subject matter of this Property Disposal Policy.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority does hereby affirm the attached property disposal guidelines as required by §2896 of the Public Authorities Law.

BE IT FURTHER RESOLVED, that the Executive Director is affirmed as the “contracting officer” who shall be responsible for the disposition of property is hereby affirmed.

This Resolution shall take effect immediately.

RESOLUTION NO. 10-34
APPROVING BFSA INVESTMENT GUIDELINES

WHEREAS, the Buffalo Fiscal Stability Authority (“BFSA”) was formed by Chapter 122 of the Laws of 2003 to “oversee the city’s budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings through debt restructuring; to finance short-term cash flow or capital needs; and if necessary, to develop financial plans on behalf of the city if the city is unwilling or unable to take the required steps toward fiscal stability”; and

WHEREAS, Section 2925 of the Public Authorities Law requires public authorities to develop investment guidelines that establish a set of basic procedures to meet investment objectives, assure that investment assets are adequately safeguarded and collateralized, establish and maintain a system of internal controls including adequate accounts and records which reflect investment transactions and provide for accurate reporting and evaluation of investments in conformance with generally accepted accounting principles; and

WHEREAS, Section 3854 of the Buffalo Fiscal Stability Act directs BFSA as to permissible investments of public funds not subject to provisions of contracts with bondholders; and

WHEREAS, in Resolution 04-02 adopted January 21, 2004, and in Resolution 09-34 reapproved July 29, 2009 the BFSA adopted investment guidelines as required by law; and

WHEREAS, in order to further comply with State law, it is necessary for the BFSA to review the adopted Investment Guidelines at least annually; and

WHEREAS, the BFSA Governance Committee reviewed and approved the proposed Investment Guidelines on July 21, 2010; and

WHEREAS, upon a review of the current Investment Guidelines, the BFSA determined that amendments were necessary to delete obsolete references, update to current information, clarify phrases, and provide continuity among policy directives; and

WHEREAS, the amendments noted above do not change the content or subject matter of these Investment Guidelines.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority hereby approve the Investment Guidelines that are attached to this resolution.

This resolution shall take effect immediately.

RESOLUTION NO. 10-35
REVIEW AND APPROVAL 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; and

WHEREAS, BFSA originally adopted a Whistleblower Policy on January 28, 2008; and

WHEREAS, BFSA reaffirmed the Whistleblower Policy on August 28, 2008 and July 29, 2009; and

WHEREAS, it is desired to have the BFSA’s Board of Directors review and approve the Whistleblower Policy annually as it represents a significant internal control method; and

WHEREAS, minor modifications were made to clarify certain language and include the ability of employees to contact the Vice-Chair of the Board of Directors for any such matters that may arise.

NOW THEREFORE BE IT RESOLVED, that the BFSA hereby approves the Whistleblower Policy as amended.

This resolution shall take effect immediately.

Reconstitute the Audit, Finance & Budget Committee

Chair Olsen introduced Resolution No. 10-36, “Reconstitute Audit, Finance and Budget Committee.” He stated that, “The Chair of the [Audit, Finance & Budget] Committee, Director Giardino has served with distinction since August 2007. I thank Director Giardino for leading this Committee over the last three years.” He added that the resolution maintains Vice-Chair Alair Townsend and Director Fredrick Floss as standing members of the Committee. Chair Olsen replaces Director Giardino as a standing member as well as Committee Chair.

Motion by Arthur, second by Mesiah.

RESOLUTION NO. 10-36

RECONSTITUTE AUDIT, FINANCE AND BUDGET COMMITTEE

WHEREAS, the Board of Directors (“Board”) of the Buffalo Fiscal Stability Authority (“BFSA”) approved Resolution No. 03-55 establishing an Audit, Finance and Budget Committee (“Committee”) on October 21, 2003; and

WHEREAS, the Board of the BFSA approved Resolution No. 07-32 reconstituting the Committee on August 8, 2007; and

WHEREAS, the Board approved Resolution No. 07-55 reconstituting the Committee on November 7, 2007; and

WHEREAS, the Board approved Resolution No. 10-05 reconstituting the Committee on February 10, 2010; and

WHEREAS, the current composition of the Committee is Director John Giardino who serves as Committee Chair, Board Vice-Chair Alair Townsend, and Director Fredrick Floss; and

WHEREAS, Director John Giardino has served the Committee as Chair with distinction since his appointment on November 7, 2007.

NOW THEREFORE BE IT RESOLVED, that in the interest of the ongoing operation and continued efficiency of the Committee, the Committee is hereby reconstituted to include Board Chair R. Nils Olsen, Jr., who will serve as Chair of the Committee.

BE IT FURTHER RESOLVED, that Board Vice-Chair Alair A. Townsend and Director Fredrick G. Floss will continue to serve in the capacity of Committee members.

This Resolution shall take effect immediately.

Approved July 21, 2010

Vote 6-0 to approve.

Harris Beach Presentation: Transitioning from Control to Advisory Period

Chair Olsen advanced the agenda to the next item for consideration: an overview of the BFSA Act specifically with respect to the methodology of how the Board transitions into an Advisory Period; what could precipitate a reversion into a Control Period, and what is required under an Advisory Period. He

noted that a summary document had been provided to all Directors and invited Harris Beach, PLLC legal counsel, Mr. Doron Bar-Levav, Esq., to summarize the documents contents.

Code of Ethics

Director Arthur offered a Point of Order and noted that it is procedurally proper to table the Code of Ethics via Board action prior to advancing the agenda.

Motion to table the Code of Ethics by Arthur, second by Johnstone.

The Board voted 6-0 to table the Code of Ethics until the September 29, 2010, Board meeting.

Harris Beach Presentation: Transitioning from “Control” to “Advisory” Period (continued)

Mr. Bar Levav, Esq., summarized two documents Harris Beach had prepared to highlight sections of the BFSA Act that pertain to the Board’s transition from Control Period to Advisory Period. Additionally summarized is the language from the BFSA Act, which addresses the actions which would precipitate a transition from Advisory Period back to Control Period.

Mr. Bar Levav, Esq. noted that the intent to the summary was not to offer an opinion but rather to simply review that specific language contained within the enabling legislation. He offered the following summary:

Statutory Summary Relating to Advisory Periods & Control Period

Advisory Period

- Requirements to transition from “Control” status to “Advisory” status:
 1. For each of the three immediately preceding City fiscal years, the City has adopted and adhered to budgets covering all expenditures, other than capital items, the results of which did not show a deficit, without the use of any Authority assistance, when reported in accordance with generally accepted accounting principles (“GAAP”); and
 2. The City Comptroller and the State Comptroller jointly certify that securities were sold by the City during the immediately preceding City fiscal year in the general public market and that there is a substantial likelihood that such securities can be sold by the City in the general public market from such date through the end of the next succeeding City fiscal year in amounts that will satisfy substantially all of the capital and cash flow requirements of the City during that period in accordance with the Financial Plan then in existence. The joint certification made by the City Comptroller and State Comptroller shall be based on their separate written determinations which may take into account a report and opinion of an independent expert in the marketing of securities selected by the authority as well as other information available to the comptrollers.

Mr. Bar Levav noted that the first criterion is generally accepted as having been met, pending the City Comptroller’s release of the audited financial statements for the prior fiscal year (i.e., fiscal year 2010)/

The second criterion has not yet occurred. Both the City Comptroller and State Comptroller will need to submit written statement to procedurally go forward. Following these actions, the BFSA will need to formally act to accept these findings and adopt a resolution to move to Advisory period. BFSA will continue in an Advisory Period until the expiration of the Act in 2037, or if a determination is made at a later time that a transfer back to Control Period is prudent and within compliance with the BFSA Act.

Control Period

1. A Control Period may be reinstated during an Advisory Period if the BFSa determines at any time that (i) a fiscal crisis is imminent, or (ii) any of the following events has occurred, or (iii) there is a substantial likelihood and imminence of such occurrence:
 - The City shall have failed to adopt a balanced budget, financial plan or budget modification as required by Sections 3856 and 3857 of the BFSa Act;
 - The City shall have failed to pay the principal of or interest on any of its bonds or notes when due;
 - The City shall have incurred an operating deficit of one percent or more in the aggregate result of operations of any major fund of the City or of a Covered Organization during its fiscal year assuming all revenues and expenditures are reported in accordance with GAAP, subject to the provisions of the BFSa Act;
 - The City Chief Fiscal Officer, at the request of the Authority or on the City Chief Fiscal Officer's initiative, could not make the certification that securities were sold by the City during the immediately preceding City fiscal year in the general public market and that there is a substantial likelihood that such securities cannot be sold by the City in the general public market from such date through the end of the next succeeding City fiscal year in amounts that will satisfy substantially all of the capital and cash flow requirements of the City during that period in accordance with the Financial Plan then in existence; or
 - The City shall have violated any provision of the BFSa Act.

Mr. Bar Levav noted that the final provision of criterion (ii) was created as a "catch all" and its meaning is intentionally ambiguous. He added that the BFSa is statutorily required to monitor that none of the five listed criteria has been met to reinstate a Control Period. The BFSa is annually required to report its findings.

Chair Olsen sought clarification on condition (i), "a fiscal crisis is imminent." Mr. Bar Levav, replied that criterion (i) is "the pretext for further review." The five point of criterion (ii) are "objective tests" while the other criteria are considered "subjective tests." Chair Olsen agreed with this interpretation.

Ms. Penksa asked a question relative to criterion (ii), point #3, which discusses an occurrence of operating deficit of one percent or greater in the aggregate result of operations of any major fund of the City or of a Covered Organization during its fiscal year. She posed the following hypothetical: the BFSa formally acts to move from a Control Period to an Advisory Period. The New York State Legislature later in the fiscal year acts to dramatically reduce the level of State Aid, necessitating a commensurate drawdown of City fund balance. She asked, "Would that cover us or would that be against Generally Accepted Accounting Principals ("GAAP"), and throw us back into a Control period?"

Mr. Bar Levav, replied that it may not automatically trigger a "Control" period, "however the [Chair's] observation regarding a fiscal crisis may play into [this] and would be sort of an early warning approach that would have the Authority monitor [this]" He added, "The 'proof is in the pudding' so that once the audited financial statements come out, if they were to be treated for [GAAP] as a one percent or greater operating deficit, notwithstanding the fund balance together with the overall economic environment, and the support or lack thereof of by [the New York State Legislature] it might play into the fiscal crisis. But, beyond that I don't know that anybody knows exactly what that means."

Ms. Penksa asked how BFSa's leadership would interpret the poised hypothetical. Ms. Mongold replied that, from a [GAAP] standpoint, the use of fund balance would be analogous to an individual

who saves a portion of their paycheck for future use. The future drawdown of these savings is not considered new; it is income that was earned previously and set aside. The use of fund balance is treated similarly; it is revenue that was earned in previous years and has already been accounted for on the income statement. Therefore the use of fund balance is not considered a new revenue source and would be considered an imbalance or gap between revenues and expenditures.

Ms. Penksa replied, “In the out years of the financial plan, [the City is] using fund balance to balance the budget so, should we still [need] to use that fund balance, does this lead to a Control period once again, if it is already budgeted, in essence?” Ms. Mongold replied that a definite answer could not be given immediately and that a review, “of what [the City’s] total expenditures were and what a one percent threshold is.”

Ms. Penksa replied that, under this hypothetical, the City would need to cut expenditures mid-year rather than use fund balance in order to avoid a reinstated Control period. Ms. Penksa postulated that the BFSAs Board should notify the New York State Legislature that the hypothetical discussed would potentially lead to a reinstated Control period. She added, “the State does not balance according to GAAP. This is an area where [BFSAs] can help educate [policymakers at the State level].”

Chair Olsen offered two observations, as follows:

1. “It is very dangerous to give advisory opinions on these sorts of things. I assume that it would depend to a great extent on the overall fiscal picture as well in terms of making a determination like that.”
2. “I also want to highlight two issues that have come up that I want people to understand. One is that if any of the covered entities end up in this circumstance, that [would] trigger a Control period. Although [the Act] says City, [it includes all Covered Organizations]. It includes most particularly the Buffalo Board of Education’s books which is a wholly different matter. Secondly, my interest in the ‘fiscal crisis is eminent [clause] is a concern that I’ve addressed before. Sometimes the reports to the BFSAs take into account assumptions that are, to say the least, ‘making lemonade out of lemons’. At some point, even a balanced projection gives the very clear impression that a financial crisis is imminent. I would share [Mr. Bar Levav’s,] interpretation that this [clause] is inherently more subjective than the other specific indicators that would reestablish a Control period.”

Mr. Bar Levav noted that the prepared memo contains verbatim language from the statute.

Chair Olsen acknowledged this and added that there is, “a judgment aspect as to whether or not a financial crisis is eminent.” He added, “I see much more danger [of a fiscal crisis] coming from the funding of the City’s schools than I do from reaching into the City’s carryover and Rainy-Day fund.”

Mr. Bar Levav noted that the statute defines the District as one of the three “non-excludable” entities. The other two are the Buffalo Municipal Housing Authority (the “BMHA”) and the Buffalo Urban Renewal Agency (“BURA”).

Director Arthur suggested that the transition from Control to Advisory period affords the BFSAs with an excellent opportunity to propose amendments to the New York State Legislature of the enabling legislation, specifically with regards to addressing covered entities on a singular basis. He added, “No one has control of the Board of Education from [the City Administration]. My point-of-view as a former member of the [Buffalo Common Council] is that [School District officials] used to come in May and tell us one thing and state, ‘This is what we have in our budget. This is what we plan to spend it for.’ We would approve that budget based on the presentation and then in July, after the fiscal year began, they would get the money and change everything.”

Chair Olsen stated, "My understanding is that the size of their budget and their impact on the City is so extensive that it would be unrealistic not to include the Board of Education as one of the Covered Entities. The internal agencies in the City are, perhaps a slightly different setting since the Board of Education is much more dependent on the City than the agencies are. It is also unique given the size of budget and the role that it plays."

Director Arthur stated, "The Board is a 'creature of the State.' The City really has no control over the Board of Education." He noted that the Buffalo School District is one of five "Dependent" districts in New York and could not become "Independent" absent a referendum.

Chair Olsen concurred with these assertions. He added that if one of the subsidiary entities were to necessitate a reinstatement of a Control period then the focus of the BFSA would be on that specific entity rather than the City of Buffalo.

Director Arthur summarized that the City of Buffalo had now finished the previous fiscal year and is now in the 2011 fiscal year. The City Comptroller will perform an audit of the City's 2010 fiscal year and submit the findings to the New York Comptroller. After this point, the New York State Comptroller will either certify or disagree with the findings. After a certification from the New York State Comptroller and the necessary written statements by both comptrollers to the BFSA, the BFSA can expect to formally act to transition to an Advisory Board.

Director Arthur added that BFSA can now "unofficially" prepare to go into an Advisory period as the certifications required are both expected.

Chair Olsen agreed with this synopsis. He expressed his desire for the BFSA to continue to work collaboratively with the City on pertinent issues.

Ms. Penksa thanked the Chair for this continued commitment and noted that the relationship between the City Administration and BFSA staff has been very productive.

Privilege of the Floor

Chair Olsen asked if there was any new business to discuss. Hearing none, he extended the "Privilege of the Floor" to any attending member of the public who wished to comment on the meeting's items.

Ms. Marilyn Galivan addressed the Board. She commended the City Administration for their work improving the financial health of the City. She expressed her support for future meetings to be held in the first floor conference room of the Market Arcade Building, as has occurred in the past as it is conveniently reachable by NFTA Metrorail.

Adjournment

Chair Olsen requested a motion to adjourn.

Motion to Adjourn by Arthur, second by Johnstone.

Vote to adjourn 6-0.

The meeting adjourned at 1:42 PM.