Minutes
Erie County Fiscal Stability Authority
January 11, 2007

Note: the following is a draft copy of minutes of a meeting of the Erie County Fiscal Stability Authority ("ECFSA"), which was held January 11, 2007. These minutes will not become final until approved at a subsequent meeting of ECFSA directors, and may be amended before approval.)

Chairman Anthony Baynes called to order the meeting of the Erie County Fiscal Stability Authority ("ECFSA") at 5:00 p.m. on Thursday, January 11, 2007 in the Auditorium of the Buffalo and Erie County Library in Buffalo. Notice of the meeting had previously been distributed to all Directors by courier and announced to the public and press.

Directors present: Anthony J. Baynes, Chair; Joseph Goodell, Stanley Keysa, Secretary; Kenneth Kruly, Sheila Kee and John Johnson.

Also present: Kenneth Vetter, Executive Director

<u>Opening Remarks</u>

Chairman Baynes: "Good evening, I'd like to call this meeting of the Erie County Fiscal Stability Authority to order. I welcome my fellow Board members and the public officials, interested members of the public and press and media in attendance. Thank you for coming.

"We are here today for the discussion and action on Erie Counties four year plan and 2007 budget that has been reviewed in detail by the Authority's Finance Committee. Before we get into our regular business I would like to announce that the ECFSA has received bond ratings from two agencies Moody's and Fitch in the last week. Moody's has given us a AA2 which is seven notches above the current Erie County rating and equal to Nassau and Buffalo rating now it is however one notch above the initial rating given to those authorities. Fitch has given us an AA stable rating which is seven notches above Erie County and one above the Buffalo Stability Authority. We would like to thank Wall Street for there confidence in us in giving us these ratings. These ratings will allow us to reduce the County's future debt service and achieve significant savings for the county tax payers.

"On to our next order of business:

Secretary Keysa has submitted minutes from our last meeting, December 28, 2006, and we have submitted copies in each of your briefing books prior to the meeting. Do I have a motion to approve?"

Director Goodell moved to approve the minutes as presented and Director Kruly seconded. Without further discussion the board voted unanimously to approve the following resolution:

Resolution No. 07-01

APPROVING MINUTES AND RESOLUTIONS FROM DECEMBER 28, 2006

BE IT RESOLVED that the Erie County Fiscal Stability Authority approves the minutes of its meeting of December 28, 2006 and ratifies and affirms two resolutions numbered 06-56, 06-57 which were approved December 28, 2006.

This resolution shall take effect immediately.

Chairman Baynes: "Directors Goodell, Kruly and Johnson of the finance committee have been hard at work reviewing efficiency grants. On behalf of that committee, Chairman Goodell would like to make recommendations to the board for consideration."

Director Goodell: "Let me take a moment to explain efficiency grants because there is evidence of some misunderstanding. Efficiency grants come from legislation written in our charter. This board was allocated a sum of $18 million that can be spent by the board under certain rules that were established basically to help push forward significant structural or significant change in the structure of County government; changes that will result in lower costs going forward while delivering the same services. We have received four proposals under that initiative from the County. They were received in July, as I recall. They were discussed and presentations were made by members of the County administration. Each proposal had to be reworked and explained. None of them came with sufficient enough explanation at first presentation to enable us to make a decision. Several months went by and those came back to us and we reviewed those with the County last week. We will report on those right now but before I go into that I would like to respond to what has also been in the press."

"The County Executive has stated that we have been negligent in not responding to his proposals regarding the combination of the city's and county's computer systems, Sheriff's patrol and various municipal police forces. We have never had a proposal from the County Executive on either of those topics. There have been letters tossed up as ideas and we would be happy to review any proposals that the County wishes to submit with detail showing broad support that the implementation of the those initiatives would cut cost and create savings With that, I would like to go through the four efficiency grant requests that we have received. "

“The first request was for public safety training at Erie Community College (ECC). The Committee did not feel that there was sufficient reengineering there or that ongoing costs down the road would not be impacted. Furthermore there was some question as to whether ECC was fully on board with the idea.”

“The second proposal involves county employee technology training. Again, the County has sent some of their own employees to training courses and had been able to eliminate high-priced IBM system engineers. They wanted to send more people and wanted us to fund more people going to training courses. We were somewhat skeptical of the ability to go much further in getting away from having outside technical help. We also thought that sort of thing was more of a routine cost-saving and was not of the nature of any real reengineering. This proposal and the public safety training with ECC I mentioned previously, are not approved.”

“The space-consolidation and relocation proposal involves a study to identify what space the County rents or owns all over the county and whether there can be consolidations. It examines the costs of using, owning or renting the property and also develops some metrics going forward that can be used to measure cost-reduction in space occupancy costs. After a second look at that, we have concluded that this initiative will be approved and passed by resolution.”

“The fourth one, which we have approved in part, is electronic monitoring of defendants. This is a complicated system whereby certain prisoners who are considered only light-to-moderate risk would be let out into the community with certain electronic monitoring devices rather than keeping them in jail. Keeping them in jail comes at a much higher cost. The whole thing is pretty complicated but we have reached an understanding. We are going to approve that request but with certain restriction on achieving benchmarks before 2nd, 3rd or 4th step funding comes forth and the details of that will be worked out with Mr. Vetter and the County.”

“So, Mr. Chairman, I wish to move resolution 07-02 for the space consolidation and 07-03 for the electronic monitoring.”

Chairman Baynes: “Does anybody have any comments or questions before we vote on these resolutions? The first resolution is 07-02, could I get a motion ?”

Director Johnson moved to approve the resolution as presented and Director Kruly seconded. Without further discussion the board voted unanimously to approve the following resolution:

Resolution No. 07-02

APPROVING AN EFFICIENCY GRANT FOR A MASTER PLAN FOR SPACE CONSOLIDATION AND RELOCATION

WHEREAS, Chapter 182 of the New York Laws of 2005 created the Erie County Fiscal Stability Authority ("ECFSA"), to serve as a corporate governmental agency and instrumentality of the State of New York, and as a public benefit corporation to "oversee [Erie] County's budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings and to finance short-term cash flow or capital needs; and, if necessary, to develop financial plans on behalf of the County if the County is unwilling or unable to take the required steps toward fiscal stability;" and

WHEREAS, New York State Public Authorities Law ("Public Authorities Law") section 3957-a provides that the ECFSA shall provide grants to the County of Erie (the "County") for achieving savings through innovations and re-engineering; and

WHEREAS, the County, on behalf of the Department of Public Works, has submitted an application to the ECFSA, as amended by a letter dated November 28, 2006, for $250,000 in efficiency grant funding for the creation of an *Erie County Master Plan for Space Consolidation and Relocation*; and

WHEREAS, pursuant to this application, the Department of Public Works will work with an architectural design firm, selected among respondents to a Request for Qualifications ("RFQ"), to develop a master plan to optimize the use of the 1.42 million square feet of office space currently used by the County, via a Request for Qualifications ("RFQ"); and

WHEREAS, the cost of the first phase of the development of this master plan will not exceed $250,000; and

WHEREAS, the ECFSA anticipates that the optimization of County office space through a master plan – with particular focus on the cost per square footage – will lead to the better utilization of space owned and leased by the County, and that the funding of this project is in the best interests of the citizens of Erie County;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA hereby grants $250,000 to the County, to be used solely for the creation of an *Erie County Master Plan for Space Consolidation and Relocation*; and

BE IT FURTHER RESOLVED that the ECFSA Executive Director send, via first-class mail, copies of this resolution to the County Executive; the County Comptroller; the Chair, the Majority Leader, the Minority Leader, and the Clerk of the County Legislature; and the Governor, the Comptroller, the Senate Majority Leader, and the Speaker of the Assembly of the State of New York.

This resolution shall take effect immediately.

Chairman Baynes: "The second resolution Mr. Director Goodell put forward is 07-03; could I get a motion to approve?"

Director Johnson moved to approve the resolution as presented and Director Kruly seconded. Without further discussion the board voted unanimously to approve the following resolution:

Resolution No. 07-03

APPROVING AN EFFICIENCY GRANT FOR ELECTRONIC MONITORING OF DEFENDANTS

WHEREAS, Chapter 182 of the New York Laws of 2005 created the Erie County Fiscal Stability Authority ("ECFSA"), to serve as a corporate governmental agency and instrumentality of the State of New York, and as a public benefit corporation to "oversee [Erie] County's budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings and to finance short-term cash flow or capital needs; and, if necessary, to develop financial plans on behalf of the County if the County is unwilling or unable to take the required steps toward fiscal stability;" and

WHEREAS, New York State Public Authorities Law ("Public Authorities Law") section 3957-a provides that the ECFSA shall provide grants to the County for achieving savings through innovations and re-engineering; and

WHEREAS, the County has submitted an application for $515,000 in efficiency grant funding to subsidize the purchase of 135 electronic monitoring devices, 50 global positioning system ("GPS") units, and one year of contractual services for the electronic monitoring of criminal defendants; and

WHEREAS, these items and services will aid the County in tracking and monitoring criminal defendants awaiting trial; and

WHEREAS, the ECFSA anticipates that successful implementation of this initiative will alleviate recent over-crowding at the Erie County Holding Center, and thereby eliminate considerable cost to taxpayers, while promoting the effective monitoring of accused juvenile offenders;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA hereby grants up to $515,000 in efficiency grant funding to the County, to be used for the sole purpose of pursuing electronic pre-trial monitoring of criminal defendants; and

BE IT FURTHER RESOLVED that the ECFSA will not release any portion of the granted funds, unless and until the County submits to the ECFSA a detailed plan providing for the periodic release of funds, contingent upon the County's achievement of efficiency benchmarks that shall be delineated in such plan;

BE IT FURTHER RESOLVED that the ECFSA Executive Director send, via first-class mail, copies of this resolution to the County Executive; the County Comptroller; the Chair, the Majority Leader, the Minority Leader, and the Clerk of the County Legislature; and the Governor, the Comptroller, the Senate Majority Leader, and the Speaker of the Assembly of the State of New York.

This resolution shall take effect immediately.

Chairman Baynes: "Director Goodell, in his role as chair of the finance committee, will report on the Authority's review of the 2007 budget and four-year financial plan as submitted by the Administration from the County on December 28, 2006."

Director Goodell: "We held a meeting here last week to have the County answer questions we had after reviewing both the budget and the four year plan. As a result of that we gave the County a number of questions. They responded Tuesday. We want to thank the County for the midnight-oil that had to be put in to get those answers to us in a short period of time. Some of those answers modified the positions that we thought were incorrect. In other words we have changed our minds on some of these as a result of those responses. I am going to ask Mr. Vetter to go through and summarize his analysis of the four year plan."

Executive Director Vetter: "Mr. Chairman, let me go through very briefly the revenues and expenses on the plan. The committee has reviewed the items at hand and any outside information. The following are the committee's conclusions two basic conclusions:"

"One, that for fiscal year 2007 in the current year's budget, that there are significant risks to items that are in the budget and the plan to the amount of approximately $15 million including items like CHIPs borrowing, sale of liens and property assessments that have been under-funded based on plans put forward by Erie County in the past. That really begins to snowball in the out-years. That $15 million turns into $26 million in 2008 $37 million in 2009 and $49 million for 2010 and really the aggregate over the out-years is approximately $114 million. We looked significantly at sales tax and the trends that were there, especially in the 2007 budget. There was an adjustment made that was supported by the Legislature indicating that there were risks to sales tax estimates for the current year. We too believe that there are some risks for the year and looked at this with a more conservative estimate. An estimate that is consistent with a ten-year increase in sales tax revenues that we have used in our assessment. There is an over-estimation in sales tax revenue, another item in our review of property assessments, and there is an assumption in the plan that there will be approximately 3% property tax increase each year."

"We believe that there is some significant risk in that property tax values in Erie County for 2000-2005 according to the State Comptroller's guidance for local government went up 2.5% and prior to that it only went up 0.07%. There has been a significant increase recently but we believe that is a result of two of the largest entities in Erie County going through a full re-valuation and catching a lot of property that hadn't been evaluated before. Now that they are at full valuation, that pay stub could be continued in the future and there is significant risk there. We also listed items such as replenishing the County road fund, which in 2005 had a $7.8 million deficit. There are no plans in the four-year plan to replenish that fund and that artificially raises the value in the general fund for Erie County, a fund that has been short for an extended period of time. Ultimately the general fund will have to feed that fund. Those are several items that we believe were in there in the past financial plan that we believe are extremely risky items, items that are not substantiated and items that the County is not poised to complete, things like the fleet consolidation, the productivity backing has gotten no more specific then they were a year ago. The blue print for change has not changed significantly over the last year from the documentation we have received. The changes in managed-attrition and collective bargaining, we discounted completely because of our understanding of the state of negotiations with the labor unions that there are not items on the table that would lead to that money being saved. On an overall basis, but not to belabor the point, $15 million in 2007, $26 million in 2008, $37 million in 2009 and $49 million in 2010, for a total of about $114 million for the out-years. I would like to turn it over to Director Kee and Director Kruly to go over more detail on the revenue and expense side."

Chairman Baynes: "Thank you very much, Mr. Vetter. Mr. Johnson?"

Director Johnson: "I think the public needs to be fully aware of the fact that, while Mr. Vetter's analysis goes directly to the point of deficiencies in the four-year plan, it needs to be made known that this board, as per discussions at the finance committee meeting, did not feel that there was enough boldness on trying to negate the furtherance of the property tax increases, because that seems to be the overall sentiment of the public. We are not here to let down some thousand people. The boldness came about in the willingness to use the property tax increase and I don't feel that as a member of this board that the taxpayers of Erie County can afford at this point in time another tax increase. So what is the solution? I believe that the solution of this board is interested in seeing some more reengineering of the four-year plan so that it is commensurate with the dollars that we are taking in already."

Director Kruly: "Mr. Vetter had already gone over the basic outline of the revenue issues in the 2007 budget and the budget in the out-years. I would just like to make a few additional points. One of the numbers that we are estimating to be a problem is in the area of uncollected taxes and sales of liens as kind of a technical thing that the public does not get into directly very often but they probably should know about. The County has for the last several years been selling liens, which means that when someone has not paid their taxes at the end of the year, the County turns those obligations over to a private company that expends funds and then tries to proceed with the collection. There are various issues that I believe the County Controller and others may have raised and I have serious concerns with this items."

"One in particular is that this program is run by something called the Erie Tax Certificate Corporation (ETCC). The ETCC is an out-of-the County-budget operation that conducts its meetings in secret and it handles millions of dollars of County money. They make decisions about who will handle contracts and should probably have to answer to the Legislature or maybe now to us. Preliminary discussions are going on in secret and I think that is a major problem for something that involves millions of dollars in taxpayer's money. We are operating on the assumption at the moment that the sale of liens would not proceed in 2007, and that would create a gap of about $3.6 million. We understand that there will be further discussions however we were asked to leave that meeting so that they could discuss those in private. Subsequent information indicates that they may be proceeding with that. We look forward to further information. In addition to that, we have looked at other items where in our estimation there is a shortfall in revenue. These include interest earnings from the Comptrollers, Clerk's fees, youth detention revenues. These items I should point out are all cited by the County Comptroller in his report to the Legislature concerning the budget in November and were essentially ignored by the Legislature. We also have raised an issue with $150,000 of revenue in the budget of the Budget Department for market-based-revenue. I know that there is a proposal on the street. We will see what happens with that at the end of the month, but we think the revenue estimates in the budget regardless of the proposal will probably come in much higher than the revenue estimates should be. We consider that there are substantial issues with the revenues of the County in 2007 and going forward, and we think this is attributed to the structural imbalance for 2007 and for the problems with the out-years."

Chairman Baynes: "Thank you Mr. Kruly; Ms. Kee?"

Director Kee: "I would like to focus on our analysis for expenditure issues for the current year 2007. The analysis indicates that expenditures will exceed budget appropriation by at least $10.5 million in the year 2007. There are some major accounts that are impacting on this issue. The first one is CHIPs borrowing. The County, rather than pay-as-you-go repair and maintenance, has engaged in a practice for a few years now (including this year) of borrow funds for basic work. This is bad budgeting and it puts the County in financial instability as long as the practice continues. I am pleased to see that the County Executive said this is an issue and recommended that, beginning next year, the County wean itself from this next year. However, it is still engaged in this kind of borrowing for routine road repairs, resulting in a gap of $4.8 million in the current year."

"Another issue that has to be considered is the risk retention fund. Appropriations of at least $4 million should have been budgeted in this account for the current year. A carry-over fund from the prior year will fund about $1.5 million of this obligation but there is still, in our opinion, a gapping hole of $2.5 million in the risk retention fund. This is problematic. There are some other accounts that are still under-funded and that will be a problem. Jail overtime; the County believes that the jail cost for overtime can be dramatically reduced; we believe that account is under funded by $2.2 million. There are some other accounts that we talked about, which Mr. Vetter talked about when we first produced our findings last fall; unfortunately, these accounts are still remaining and have not been corrected. For example, fleet consolidation savings are overestimated by at least $143,000. Vehicle fleet reduction, we believe, are overestimated by $125,000. True contract competition and best practices, we don't see evidence of that, and would have to say those savings are overestimated by $110,000. Same thing with purchasing practices, no reforms are evident in any of the budget analysis we have done or the supplemental information pieces that have been submitted. That is a problem of $500,000 and there are two other accounts of concern. One involves County government purchases by other towns, so-called savings of $75,000, and resumed use of procurement cards. They had an experimental project on that and it yielded no return. That is a problem of $50,000. All totaled, we believe that in a very concerted and deliberate way that expenditures will be a problem of $10.5 million in the year 2007. As you all know, when you start off with a gaping hole, as the years progress, those problems become more acute and next year the expenditure problem is forecasted at $21.5 million, $29.4 million in 2009 and $38.5 million in 2010. Over the course of four years, the expense problem at our best estimation is $89.5 million."

Chairman Baynes: "Thank you Mrs. Kee. Further comment from Board members?"

Secretary Keysa: "I went through the transcript for the comments that were made at the finance committee meeting last week. What strikes me is that, repeatedly, there is a sense on the part of the Administration that there is not a crisis. A sense on the part of the Administration that the taxes are not high enough; that elsewhere, the taxes are higher, that the borrowing and debt is higher in other counties. This seems to lose track of the fact that this community has a crisis in terms of wealth generation. We have had all sorts of industries leave this area and a major reason for this is that the taxes and other costs here are too high. We have to bring those taxes under control; we cannot allow for them to continue at the level they are now, much less increase them. Clearly, as you listen to the comments that were made by the Budget Director at the last meeting, there is a willingness there to take all these kinds of experiments and these over-estimates of saving and say "well even so, if the taxes go up they go up." I think everybody in this community, with the possible exception of some of in the Administration, are looking for us to find a way of reducing these taxes and making this community more competitive in a world economy where clearly we are not as competitive as we should be."

Chairman Baynes: "Well said, Secretary Keysa."

Director Goodell: "I would like to make one comment regarding the role of the board in judging this four-year plan and the budget. We are responsible to apply our judgment to the reasonableness of cost projections and we are required to apply our judgment to the reasonableness of revenue projections. Those revenue projections include property tax increases. If we apply more conservative assumptions to the four-year plan, our calculations indicate that property taxes will go up by about 30% over the period of four years. I am certain that the County disputes that but we think that those assumptions are reasonable; that is what we see. It is therefore our responsibility to test and see whether the community is prepared to accept that kind of tax increase, particularly since we have seen Legislators in the past balk at various types of tax increases. For that reason, we in our way, have to judge. Director Johnson and Secretary Keysa have both elaborated on the willingness of the community and Legislature to go along with some of the revenue projections. I want to make sure that that part of our role is clearly understood."

Secretary Keysa: "Mr. Chair, I might add that when this board started, it was clear that the County was in a deep hole and the thing that was necessary was to cover the immediate cost that we were facing at that time. This body and eventually others supported those Legislators who took courageous votes to increase taxes to stabilize the initial situation as it is clear that the reengineering and cost-cutting was going to take a longer time frame to be done right, and that you had to provide those revenues. Now is the time for that reengineering. We are eighteen months into this process and the County is not showing adequate innovation in terms of bringing the costs in line as to where they need to be. As Director Goodell said, I doubt seriously that many of the Legislators will approve continued increases in these taxes, nor will the public, if we are not seeing strong efforts to reduce the costs."

Chairman Baynes: "Thanks you, Secretary Keysa. Mr. Director Johnson?"

Director Johnson: "Just one other final comment, Mr. Chairman; it is on the note of taxes. There is a crisis in Erie County's financial situation, and I think that the public needs to take a close look. Prior to year 2000 there was a

County government that operated with enormous surpluses, regular budgeting and supportive funds. When I talk about supportive funds, I am talking about tobacco settlements. Those surpluses and supportive funds are gone. Where did they go? What is the amount? That new creativity in government; it was about those dollars leaving on account of spending on services that were not in the best interest of the tax payer nor in the best practices of good government. I believe that this Authority is reaching out to the public to say "Let's go back to the basics in government and a good road map would be to look at budget prior to year 2000."

Chairman Baynes: "Well said and thank you for your comments. Does anyone on our board have any further comments? I would like call our counsel, David McNamara, to discuss resolution 2007-2010."

McNamara: "The law requires that the Administration submit to the Authority a balanced budget and a four-year plan that includes actions sufficient to ensure that revenue will exceed expenditures in each of the fiscal years covered by the plan. We have prepared proposed resolution number 07-04 based upon the findings of the finance committee, as reported here this evening. I know that each of you have been provided with a copy of this resolution in the contents of your meeting folders and I will go through the resolution and highlight it for you."

"Number one includes the background of information concerning where we have been to this point and some of the legal requirements that we are acting in accordance with."

"Number two identifies the structural imbalance in the 2007 budget and that includes all of the matters that have been described here today by the finance committee's report and the comments of the other board members concerning the structural imbalance in the 2007 budget that was provided to that Authority by the County."

"Number three which is titled that *2007-2010 Plan's Unreasonable and Inappropriate Assumptions of Revenues and Savings* identifies all of the deficiencies in the four-year plan that render that plan structurally imbalanced. Again, as reported by the Finance Committee here today."

"The final sections of the resolution are the resolutions itself and that is that action that is required by law to be taken as a consequence of the County's failure to submit a balanced budget and four year plan. Those resolutions provide first that the County has or has failed to adopt at balanced budget within the time frames provided by the County charter again in accordance with the finance committee's findings."

“The next resolution states that be it further resolved that for the following reasons (and they are enumerated there) that the budget contains a $15 million deficit and the revised 2007-2010 is structurally imbalanced.”

The next resolution finds that again based on the finance committee’s analysis. That the 2007-2010 plan fails to comply with the law and is incomplete as it does not include quarterly expenditures or revenue projections required by the Public Authorities Law 3957(2)(C).”

“The next resolution includes this Authority’s recommendation to the County with respect to the four-year plan. After that, there is a resolution to the Executive Director to provide notices that are required under the law based upon finding of the Authority that the four-year plan is structurally imbalanced.”

“The next resolution, which is the first at the top of page seven, specifies the Authority imposes a control period based upon its findings with respect to the budget and plan and the County failure to comply with the law.”

“The next resolution renews and continues the contract approval process and the hiring freeze that was imposed by the Authority resolutions 06-51 and 06-52.”

“The next resolution formally disapproves the revised 2007-2010 four-year plan that was submitted by the County.”

“The resolution that follows that specifies that this Board will, in one year, review the determination that was reached today and that if the conditions that exist now causing the creation of the control period no longer exist, the control period will cease and the board will revert to an advisory capacity.”

“The final two resolutions are statements that the Authority with regards to the control period to be in the best interest of the County and a pledge to continue to work with the County to rectify the deficiencies in the County’s four-year plan. Those are the proposed resolutions you have in your hand and if you have any questions I would be glad to answer them.”

Chairman Baynes: “Any questions for Mr. McNamara?”

Director Johnson then moved the resolution, seconded by Director Kee, and Chairman Baynes initiated discussion.

Chairman Baynes: "The presentation made here by Mr. McNamara and our board members is a very clear reminder of Erie County's financial position in 2007 and going forward. There appears to be no clear reengineering going on in the County Hall and the fact that here is no direct substantiation for major parts of the plan is very disconcerting. The ECFSA is here to protect the interests of taxpayer who pay for and receive Erie County services. With this stark report, I see no other alternative but to reject the four-year plan, declare 2007 budget out-of-balance and remain in a control period for the foreseeable future. I hereby call a motion to accept the findings of the finance committee to disapprove and reject the four-year plan and to declare the four-year budget out-of-balance and to adopt the other findings and resolutions set forth in resolution 07-04, that were circulated prior to the board meeting. Could I get a motion to approve resolution 07-04?"

Director Johnson again moved to approve the resolution as presented and Director Kee again seconded. Without further discussion the board voted unanimously to approve the following resolution:

Resolution No. 07-04

IMPOSING A CONTROL PERIOD UPON THE COUNTY OF ERIE, AND DISAGREEING WITH ELEMENTS OF ERIE COUNTY'S REVISED 2007-2010 FINANCIAL PLAN

I. The Ability of the Erie County Fiscal Stability Authority to Review Erie County's 2007 Budget and Revised 2007-2010 Financial Plan

WHEREAS, Chapter 182 of the New York Laws of 2005 (the "ECFSA Act"), as amended, created the Erie County Fiscal Stability Authority ("ECFSA"), to serve as a corporate governmental agency and instrumentality of the State of New York, and as a public benefit corporation to "oversee [Erie County's] budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings and to finance short-term cash flow or capital needs; and, if necessary, to develop financial plans on behalf of the County if the County is unwilling or unable to take the required steps toward fiscal stability;" and

WHEREAS, New York State Public Authorities Law ("Public Authorities Law") section 3957(1) requires the Erie County Executive (the "County Executive") to "prepare and submit to the [ECFSA] a four-year financial plan and the county executive's proposed county budget, not later than the date required for submission of such budget to the [Erie County] legislature pursuant to the county charter;" and

WHEREAS, the four-year financial plan, as defined by Public Authorities Law section 3951(14), is a "financial plan of [Erie County] and [its] covered organizations;" and

WHEREAS, the County Executive duly submitted his proposed budget for Erie County (the "County") for fiscal year 2007, and a four-year financial plan ("Plan") for fiscal years 2007-2010, to the ECFSA on October 18, 2006; and

WHEREAS, upon enacting Resolution 06-49 on November 3, 2006, the ECFSA determined that the 2007-2010 Plan did not "contain actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for each fiscal year," and thereby violated Public Authorities Law section 3957(1); and

WHEREAS, on December 12, 2006, the County adopted its fiscal year 2007 budget (the "2007 Budget"); and

WHEREAS, pursuant to Public Authorities Law section 3957(2)(c), the County submitted to the ECFSA its adopted 2007 Budget and a modified financial plan for fiscal years 2007-2010 (the "Revised 2007-2010 Plan") on December 28, 2006; and

WHEREAS, pursuant to Public Authorities Law section 3957(2)(b), "[n]ot . . . more than fifteen days after submission of a financial plan modification, the [ECFSA] shall determine whether the . . . financial plan modification is complete and complies with the provisions of [section 3957] and the other requirements of [the ECFSA Act] . . .;" and

WHEREAS, Public Authorities Law section 3957(2)(b) therefore instructs the ECFSA to determine whether the Revised 2007-2010 Plan complies with the provisions of section 3957 on or before January 12, 2007; and

WHEREAS, Public Authorities Law section 3957(2)(b) also necessarily instructs the ECFSA to review the 2007 Budget, which constitutes the first year of the Revised 2007-2010 Plan; and

WHEREAS, Public Authorities Law section 3957(2)(d) further instructs the ECFSA to "make a certification setting forth revenue estimates agreed to by the [ECFSA]," if it determines that the Revised 2007-2010 Plan "is complete and complies with the standards set forth in [section 3957(2)];" and

WHEREAS, Public Authorities Law section 3957(2)(e) alternatively instructs the ECFSA to provide notice of its disagreement with elements of the Revised 2007-2010 Plan "to the County, with copies to the [New York State] director of the budget, the state comptroller, the chair of the state assembly ways and means committee and the chair of the state senate finance committee if, in the judgment of the [ECFSA]," the Revised 2007-2010 Plan:

(i) is incomplete;

(ii) fails to contain projections of revenues and expenditures that are based on reasonable and appropriate assumptions and methods of estimations;

(iii) fails to provide that operations of the county and the covered organizations will be conducted within the cash resources available; or

(iv) fails to comply with the provisions of the ECFSA Act or other requirements of law;

II. Structural Imbalance in the 2007 Budget

WHEREAS, the 2007 Budget "assumes continuation of the 8.75% [sales tax] rate throughout" 2007; and

WHEREAS, the 8.75% sales tax rate consists of:

(1) a 4% sales tax levied by New York State;

(2) a 3% County sales tax that needs no further authorization;

(3) an extra 1% sales tax ("extra 1% sales tax") levied by the County before 2005, and whose authorization will expire on February 28, 2008; and

(4) an extra 0.75% sales tax ("extra 0.75% sales tax"), consisting of:

(a) a 0.25% sales tax, enacted by the County in 2005 upon New York State authorization, which will expire on November 30, 2007; and

(b) a 0.5% sales tax, enacted by the County in 2005 and authorized by New York State in 2006, and whose authorization will also expire on November 30, 2007; and

WHEREAS, the County may continue to levy the extra 0.75% sales tax beyond November 30, 2007, only after:

(1) the New York State Legislature introduces a bill to reauthorize the extra 0.75% sales tax;

(2) ten (10) Erie County legislators approve a home-rule message requesting the bill's enactment;

(3) the New York State Legislature votes in favor of the reauthorization bill already introduced; and

(4) ten (10) Erie County legislators subsequently vote to enact the extra 0.75% sales tax; and

WHEREAS, not all of the legislative actions necessary to re-enact the extra 0.75% sales tax have yet taken place; and

WHEREAS, continuing uncertainty concerning the prospects for completing the legislative actions necessary to re-enact the extra 0.75% sales tax at a time sufficient to ensure revenues therefrom for a full twelve months in 2007 renders the assumption of such revenues for a full twelve months in 2007 unreasonable and inappropriate; and

WHEREAS, if the County cannot continue to levy the extra 0.75% sales tax beyond November 30, 2007, Erie County will fail to realize approximately $10 million in revenue that it anticipates to receive in December 2007; and

WHEREAS, pursuant to the 2007 Budget, Erie County also will borrow $4.8 million in order to subsidize the Consolidated Local Streets and Highway Improvement Program ("CHIPS") fund, and to facilitate payment of operating expenses; and

WHEREAS, the County has overstated CHIPS revenues by including revenues from bond financing and from CHIPS reimbursement; and

WHEREAS, the Finance Committee has reviewed the 2007 Budget and determined that it also includes the following projections of revenues and expenditures that are based upon assumptions and methods of estimations that are not reasonable or appropriate:

(1) overstates expected interest earnings by $471,000;

(2) overstates expected revenue from fees charged by the County Clerk's Office by $300,000;

(3) states expected proceeds from the market-based revenue program by $150,000, which will not be realized;

(4) overstates expected revenue from greens fees charged by the County Parks Department by $110,807;

(5) overstates expected revenue from the County Youth Detention Facility by $400,000;

(6) understates the expected expenditure that the County Sheriff's Department's Jail Management Division will incur for employee overtime by $2.2 million;

(7) under-funds the County's risk retention fund by $2.5 million;

(8) overstates expected savings due to fleet consolidation and reduction by $268,500; and

(9) overstates expected savings due to purchasing initiatives by $735,000; and

WHEREAS, absent the sale of property tax liens through the Erie Tax Certificate Corporation ("ETCC"), the County also will not realize proceeds in the amount of $3.586 million; and

WHEREAS, even if the County may levy the extra 0.75% sales tax beyond November 30, 2007, the unreasonable and inappropriate assumptions identified above amount to a total deficit of $15,521,307 in the 2007 Budget; and

WHEREAS, the 2007 Budget is not balanced and, therefore, the County has failed to adopt a balanced budget for fiscal year 2007 within the time frames prescribed in the County Charter; and

WHEREAS, Public Authorities Law section 3959(1)(a) mandates the ECFSA to impose a control period upon the County's "[failure] to adopt a balanced budget within time frames prescribed in the county charter;"

III. The Revised 2007-2010 Plan's Unreasonable and Inappropriate Assumptions of Revenues and Savings

WHEREAS, the Revised 2007-2010 Plan's operating revenue projection "assumes continuation of the 8.75% [sales tax] rate throughout the four-year period;" and

WHEREAS, the Revised 2007-2010 Plan also includes "proposed actions to close the [County's] budget gaps as forecast for fiscal years 2008, 2009, and 2010;" and

WHEREAS, the most recent version of the County's Summary of 2007 Matrix Initiatives, dated December 20, 2006, includes assumptions of the revenues or savings that each of these proposed actions will create over the duration of the Revised 2007-2010 Plan; and

WHEREAS, the ECFSA has encouraged and supported the County's development of the Matrix Initiatives as tools for reducing projected deficits and re-engineering governance; and

WHEREAS, the County's Summary of 2007 Matrix Initiatives, to the extent that the Revised 2007-2010 Plan relies upon them, must nonetheless be based upon assumptions for revenues and savings that are reasonable, appropriate, and substantiated in fact; and

WHEREAS, the Finance Committee has reviewed the Revised 2007-2010 Plan and determined that it includes for fiscal years 2008-2010 (the "out years") the following projections of revenues and expenditures that are based upon assumptions and methods of estimations that are not reasonable or appropriate:

(1) states $300 million in proceeds from the extra 0.75% sales tax;
(2) overstates expected property tax revenue by $5,533,450, given the assumption of 2.5% annual growth in the assessed valuation of all properties in the County;
(3) overstates expected proceeds from the County sales tax by $10,151,669, regardless of continuation of the 8.75% sales tax rate;
(4) overstates expected interest earnings by $1,470,277;
(5) overstates expected revenue from fees charged by the County Clerk's Office by $900,000;
(6) overstates expected proceeds from the market-based revenue program by $300,000;
(7) overstates expected revenue from greens fees charged by the County Parks Department by $332,421;
(8) overstates expected revenue from forestry management by $810,000;
(9) overstates expected revenue from the County Youth Detention Facility by $750,000;
(10) overstates expected revenue from the establishment of a supervision fee for probationers by $1.044 million;
(11) understates expected replenishment of the County Road Fund by $7.808 million;
(12) under-funds the County's risk retention fund by $8.5 million;
(13) overstates expected savings due to managed attrition by $18,694,134;
(14) overstates expected savings due to collective bargaining by $19,784,654;

(15) overstates expected savings due to fleet consolidation and reduction by $805,500;
(16) overstates expected savings due to creation of a productivity bank by $3 million;
(17) overstates the expected reduction in expenditures at the County's residential treatment center by $2.756 million;
(18) overstates expected savings due to combating Medicaid fraud and abuse by $875,000;
(19) overstates expected savings due to the implementation of integrated case management and the Blueprint for Change by $7.2 million;
(20) overstates expected savings due to the development of a regional automated public health laboratory testing program by $352,500;
(21) overstates expected savings due to purchasing initiatives by $3.704 million;
(22) overstates expected savings due to pooled insurance bidding by $1.5 million;
(23) overstates expected savings due to limiting overtime through workforce realignment and targeted staffing by $3.6 million;
(24) overstates expected savings due to implementation of alternatives to incarceration by $9 million; and
(25) understates the expected expenditure to subsidize the County Sheriff's Department's Road Patrol by $11,481,378; and

WHEREAS, the County also will not realize expected proceeds in the amount of $4,118,203 from the sale of property tax liens through the ETCC; and

WHEREAS, even if the County may levy the extra 0.75% sales tax beyond November 30, 2007, the unreasonable and inappropriate assumptions identified above amount to a total deficit of $114,871,186 through the Revised 2007-2010 Plan's out years; and

WHEREAS, even though the Revised 2007-2010 Plan anticipates property tax increases to compensate for potential deficits during the out years, it is not reasonable or appropriate to assume, for purposes of financial planning, that the County will possess the political will necessary to enact sufficient property tax increases, aggregated over the three out years, to raise in excess of $114 million in revenue;

IV. Resolutions

NOW, THEREFORE, BE IT RESOLVED that the ECFSA adopts the report and findings of its Finance Committee concerning the 2007 Budget and the Revised 2007-2010 Plan; and

BE IT FURTHER RESOLVED that the County has failed to adopt a balanced budget within the time frames prescribed by the County Charter; and

BE IT FURTHER RESOLVED that, for the following reasons, the Revised 2007-2010 Plan does not "contain actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for such fiscal year:"

> (1) The Revised 2007-2010 Plan does not reasonably assume that the Erie County Legislature and the New York State Legislature will reauthorize through December 31, 2010, the extra 0.75% sales tax;
>
> (2) Notwithstanding possible continuation of the extra 0.75% sales tax beyond November 30, 2007, the 2007 Budget contains a $15,521,307 deficit, which renders the first year of the Revised 2007-2010 Plan structurally imbalanced.
>
> (3) Although the Revised 2007-2010 Plan contemplates property tax increases that would offset the failure to achieve projected revenues or savings, such property tax increases cannot correct the structural imbalance in the already adopted 2007 Budget, which constitutes the first year of the Revised 2007-2010 Plan, and it is unreasonable and inappropriate to assume that the County will effectuate property tax increases to the extent necessary to account for a $114,871,186 deficit, aggregated over the out years of 2008 through 2010.

BE IT FURTHER RESOLVED that, the County's December 28, 2006, submission of its 2007 Budget and the Revised 2007-2010 Plan is incomplete, because it does not include the quarterly expenditure or revenue projections required by Public Authorities Law section 3957(2)(c); and

BE IT FURTHER RESOLVED that, the ECFSA recommends to the County that a four-year financial plan for fiscal years 2007-2010 that would comply with the ECFSA Act would not rely upon the unreasonable and inappropriate assumptions and methods of estimations that are identified herein; and

BE IT FURTHER RESOLVED that, the ECFSA Executive Director, on behalf of the ECFSA, is hereby authorized and directed to send, via first-class mail, a copy of this resolution, in accordance with Public Authorities Law section 3957(2)(e), to:

> (a) the County,
> (b) the New York State Director of the Budget,
> (c) the Office of the New York State Comptroller,
> (d) the Chair of the New York State Assembly Ways and Means Committee, and
> (e) the Chair of the New York State Senate Finance Committee; and

BE IT FURTHER RESOLVED that, pursuant to Public Authorities Law section 3959(1)(a) and (1)(e), the ECFSA imposes a control period upon the County; and

BE IT FURTHER RESOLVED that, incident to and in furtherance of the imposition of a control period pursuant to the above resolution, the ECFSA hereby renews and continues the contract approval procedure and hiring freeze that it imposed prior hereto pursuant to ECFSA resolutions 06-51 and 06-56, respectively; and

BE IT FURTHER RESOLVED that, on account of the findings herein, and pursuant to Public Authorities Law section 3959(2)(a), the ECFSA disapproves the Revised 2007-2010 Plan; and

BE IT FURTHER RESOLVED that, if the control period remains in effect as of one year from the date of this resolution, then within sixty (60) days thereafter, the ECFSA shall determine the circumstances that justify continuation of a control period, and enumerate those circumstances in writing; and

BE IT FURTHER RESOLVED that the ECFSA regards the imposition of a control period to be in the best interests of the citizens of the County; and

BE IT FURTHER RESOLVED that the ECFSA pledges to continue to work cooperatively with the County's elected officials toward returning fiscal stability to County government.

This resolution shall take effect immediately.

Chairman Baynes asked for a motion to adjourn. Director Johnson moved and Director Goodell seconded. Without further discussion the board, voted unanimously to adjourn.

Respectfully submitted,

Stanley J. Keysa
Secretary