

**Minutes  
Erie County Fiscal Stability Authority  
April 19, 2007**

Chairman Anthony Baynes called the meeting of the Erie County Fiscal Stability Authority ("ECFSA") to order at 10:00 a.m. on Thursday, April 19, 2007 in the Auditorium of the Buffalo and Erie County Library in downtown 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; Stanley J. Keysa, Secretary; Kenneth Kruly; Shelia Kee and John Johnson

Chairman Baynes: "Before we begin this meeting here today, I would like to take a moment of silence for the students, friends and families in Virginia. Thank you."

Chairman Baynes: "I 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."

"The focus of this meeting will be a series of contracts that Erie County has forwarded to the Authority for review. In particular we have a number of people here to provide us with information on the County's proposed tax lien sale with Xspand."

"We have been put here to work in the best interests of the taxpayers of Erie County. I want to make it very clear right now that we need more information and more clarity on the impact of the proposed tax lien sale before bringing it to a vote. We are looking at thoughtful deliberations before making any kind of decision that has an order of magnitude of about \$40 million, but we will work to expedite our process to provide assurance that the right thing gets done at the right time."

"I want to thank everyone, in advance for their participation and patience in this process."

"Before going on to our regular business, you see that one of our members is missing from the table. My good friend Joseph Goodell, who is the consummate community servant, a good man and a trusted confidant, is hospitalized. I have been receiving calls from the media and their prayers are with him. Joe continues to fight. He is still Buffalo General and we just ask that you send your thoughts and prayers for Mr. Goodell's recovery."

"On to the first order of regular business which is the approval of the minutes from the last meeting on March 26, 2007. They have been submitted by Secretary Keysa, and were circulated to the members in their briefing books prior to this meeting. Do I have a motion to approve?"

Director Kee moved the following resolution, seconded by Director Johnson; without further discussion, the motion was unanimously approved.

**Resolution No. 07-24**

APPROVING MINUTES AND RESOLUTIONS FROM MARCH 26, 2007

BE IT RESOLVED that the Erie County Fiscal Stability Authority approves the minutes of its March 26, 2007 meeting and ratifies and affirms nine resolutions numbered 07-15, 07-16, 07-17, 07-18, 07-19, 07-20, 07-21, 07-22 and 07-23 that were approved on March 26, 2007.

This resolution shall take effect immediately.

Chairman Baynes "Office staff has circulated contracts requiring approval and a matrix with the highlights of those contracts. I am looking to follow the same process we have been using in approving the agreements. I understand that there are different groups of contracts that need approval and individual agreements that we will take under separate consideration. Mr. Executive Director Vetter would you like to go through the first slate."

Executive Director Vetter: "Yes Mr. Chairman. Just very quickly, in the matrix that you have in front of you there are four groups of contracts. The first has the largest number of contracts that have been received and reviewed in a timely manner and there are no questions on and appear to be regular county business and will be something the board can consider as a group. The second group is contracts that have been received and require legislative approval in order to be considered on a timely basis. The Legislature does need to approve these, but the County believed that these contracts were received simultaneously with the Legislature. In the third group, there are contracts that we received after the deadline and did not get the chance to analyze in depth, so we have separated them here so that we can look at them separately. We have allowed into this approval session the fourth group, which are

late arrivals that came within two days of the meeting. The County has asked for us to consider them because they related to federal government money that has to be applied for very quickly and those are date sensitive and could affect the County if they are not approved.”

“Mr. Chairman, what I would recommend on behalf of the staff is group one, which encompasses 14 contracts with supporting information that staff has recommended be considered as a group and approved.”

Director Kee: “I would ask that we separate out the third item in the first group involving mail service.”

Executive Director Vetter: “The item for presorting mail service.”

Director Johnson: “Mr. Chairman before taking a motion, my question is: In as much as there are many contracts recommended for approval here, I still want a definitive answer regarding organizations that may be outsourcing services. Did we go through procurement process?”

Executive Director Vetter: “Yes, Director Johnson, what we have done for the procurement process is indicate where this report has been sent and if there was any recommendation and how the bidder was chosen based on lowest price and/or other reasons. Those are in the forms that were sent out and in front of you in the matrix.”

Director Johnson: “Okay; the second questions I have coattails on what Director Kee was concerned with. For the third item on group one, my question is: How long will this outsourcing be in existence? Is this on a one year basis?”

Executive Director Vetter: “My understanding is that it is a one year basis. When we originally distributed the contract, I’m not sure if anyone had a significant question or if there was someone here who could bring more clarity to the issue. If not I suggest we approve this initial slate.”

Chairman Baynes: “So noted. May I have a motion to approve the group one slate minus item number three?”

Director Keysa moved the following resolution to approve the contracts in group one, less contract number three (dealing with outsourcing mail services); his motion was seconded by Director Kruly; without further discussion, the resolution was unanimously approved.

**Resolution No. 07-25**

**APPROVING CERTAIN CONTRACTS, SETTLEMENTS, AND OTHER OBLIGATIONS BINDING THE COUNTY OF ERIE**

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, the ECFSA first imposed a control period upon the County of Erie (the “County”) by adopting Resolution 06-49 on November 3, 2006; and

WHEREAS, incident to and in furtherance of the imposition of the control period, the ECFSA adopted Resolution 06-51, which authorized a process for approving contracts, settlements, or other obligations binding or purporting to bind the County (“contract approval process”), on November 3, 2006; and

WHEREAS, in adopting Resolution 07-04 on January 11, 2007, the ECFSA renewed and continued the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA has adopted Resolution 07-10, which replaces and supersedes the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA must review and approve any contract, settlement, or other obligation, valued at greater than \$50,000, that binds or purports to bind the County or a covered organization, before it takes effect; and

WHEREAS, the County Executive or a “Responsible Official,” as defined in Resolution 07-10, has duly submitted a request for review of the contracts, settlements, and other obligations listed on the attached document; and

WHEREAS, the ECFSA Executive Director, after consultation with the ECFSA Staff, has recommended approval of each contract, settlement, or other obligation via written correspondence to each ECFSA Director;

NOW, THEREFORE, BE IT RESOLVED, that the ECFSA approves the contracts, settlements, and other obligations listed in Group 1 on the attached document, except for contract number three related to outsourcing mailing services.

<b>GROUP 1</b>		
Item	Description	Amount
EC Mental Health Service Contract – Cazenovia Recovery Systems	Fully NYS funded program to improve residential chemical dependency treatment services by targeting staff recruitment & retention needs.	\$113,800 - \$0 local share, all NYS funded
EC Public Works Professional Services Change Order – DiDonto Associates	Change order amending original agreement for Ralph Wilson Stadium, pursuant to EC agreement with the Buffalo Bills.	Not to Exceed \$50,000
EC Central Police Services purchase contract – Applied Biosystems	Fully NYS grant funded purchase of an analyzer, software kit and plate kit to be used for DNA evidence analysis by the crime lab.	\$99,909.12 - \$0 local share
Erie Community College purchase contract – D.V. Brown & Associates	Labor & materials to replace the HVAC system in rooms 254, 256 & 260 of ECC North Campus.	\$52,352 - \$0 county share
EC Environment & Planning Sewerage Management – Waste Management	Pickup & disposal of Sewer plant incinerator ash.	\$70,000 - \$0 county share
EC Environment & Planning Sewerage Management – Sterns & Wheler	Outside consultant to evaluate the sanitary sewer’s capacity in ECSD #2.	\$129,265 - \$0 county share
EC Department of Health Service Contract – O’Connell Murphy Funeral Home	Cadaver pick-up and indigent burials – interim contract.	Not to exceed \$100,000
EC Department of Information & Support Services – Purchase Contract - Graphic Service & Equipment	Ryobi 300 PLX Offset Perfector Printing press	\$55,200
EC Central Police Services – Purchase Contract - DeLacey	Two Ford Expeditions for CPS Homeland Security	\$99,978 – Homeland Security \$’s - \$0 local share
EC Public Works – Professional Services Change Order – Abate Associates Engineers & Surveyors	Additional engineering & construction admin. Services made necessary by a number of unexpected conditions uncovered during reconstruction in areas 2 & 3 of the Botanical Gardens.	Not to exceed \$45,000
EC Senior Services - Purchase of Services Contracts - EISEP	Contract with 11 agencies for homecare. They provide for personal care, housekeeping and cleaning services to frail elderly. These services prevent or delay institutionalization in Nursing Homes.	EISEP - \$1,758,000 – III-E - \$50,000 - \$0 county share
EC Public Works – Professional Services Change Order – Barton, Hovey, Nardini & Tries	Change orders related to two proposals – a project Initiation Report for the Exhibit Hall Ceiling Imp. Project & for an Elevator Modernization project for the Convention Center.	Not to Exceed \$47,600
EC Board of Elections - Purchase Contract – Eaton Office Supply	Office supplies for Board of Elections	Not to Exceed \$80,000 – charged back in election re-spread

This resolution shall take effect immediately.

Executive Director Vetter: “Mr. Chairman, as I had mentioned, in the second slate of contracts, there are two there for the Department of Social Services that have no local share. The reason that these are separated out was because there was no approval by the Erie County Legislature as of yet and my understanding is that

they are on the agenda for this afternoon and the County does anticipate approval. The staff suggests the Board approve with the proviso that they are approved as is by the County Legislature.”

Director Kee moved the following resolution to approve the contracts in group two; her motion was seconded by Director Johnson; without further discussion, the resolution was unanimously approved.

**Resolution No. 07-26**

**APPROVING CERTAIN CONTRACTS, SETTLEMENTS, AND OTHER OBLIGATIONS BINDING THE COUNTY OF ERIE**

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, the ECFSA first imposed a control period upon the County of Erie (the “County”) by adopting Resolution 06-49 on November 3, 2006; and

WHEREAS, incident to and in furtherance of the imposition of the control period, the ECFSA adopted Resolution 06-51, which authorized a process for approving contracts, settlements, or other obligations binding or purporting to bind the County (“contract approval process”), on November 3, 2006; and

WHEREAS, in adopting Resolution 07-04 on January 11, 2007, the ECFSA renewed and continued the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA has adopted Resolution 07-10, which replaces and supersedes the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA must review and approve any contract, settlement, or other obligation, valued at greater than \$50,000, that binds or purports to bind the County or a covered organization, before it takes effect; and

WHEREAS, the County Executive or a “Responsible Official,” as defined in Resolution 07-10, has duly submitted a request for review of the contracts, settlements, and other obligations listed on the attached document; and

WHEREAS, the ECFSA Executive Director, after consultation with the ECFSA Staff, has recommended approval of each contract, settlement, or other obligation via written correspondence to each ECFSA Director;

NOW, THEREFORE, BE IT RESOLVED, that the ECFSA approves the contracts, settlements, and other obligations listed on Group 2 of the attached document.

<b>GROUP 2</b>		
<b>Item</b>	<b>Description</b>	<b>Amount</b>
EC Department of Social Services – Service Contract – multiple providers	NYS Budget cost of living allowance of 2.5% to providers of mandated preventative services and providers of community optional preventative services.	\$95,313 - \$0 local share
EC Department of Social Services – Service Contract – Salient Corporation	Contract to provide & install proprietary case management and client tracking software product on a DSS local area network.	\$154,000 \$0 local share

This resolution shall take effect immediately.

- Chairman Baynes: “Mr. Vetter would you please continue with the group three.”
- Executive Director Vetter: “Within the third group of the contracts, there are 12 of them here. They really were separated because they came late. There doesn’t seem to be any significant problem. The board has reviewed them as well as the staff and appears to be regular county business. The overall majority of them have no County local share and would recommend as the staff, that these be approved and do not require legislative approval at this point. They appear to be in order and, if the board concurs, these can be approved in that matter.”
- Director Keysa: “Please note that two of these items apparently do have substantial local share. There is \$10,370,500 for one, and also there is a 64% share on the other set; just a notation to the comments that you made, that there are some items that have a local share on them. I would ask if Director Johnson would comment on the second one in group three, but at this point these appear to be appropriate.”

Director Johnson: "My only comment, Director Keysa, is that there is a large reimbursable back and I would recommend approval."

Chairman Baynes: "With that may I have a motion to approve the group three slate?"

Director Johnson moved the following resolution to approve the contracts in group three; his motion was seconded by Director Kruly; without further discussion, the resolution was unanimously approved.

**Resolution No. 07-27**

**APPROVING CERTAIN CONTRACTS, SETTLEMENTS, AND OTHER OBLIGATIONS BINDING THE COUNTY OF ERIE**

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, the ECFSA first imposed a control period upon the County of Erie (the "County") by adopting Resolution 06-49 on November 3, 2006; and

WHEREAS, incident to and in furtherance of the imposition of the control period, the ECFSA adopted Resolution 06-51, which authorized a process for approving contracts, settlements, or other obligations binding or purporting to bind the County ("contract approval process"), on November 3, 2006; and

WHEREAS, in adopting Resolution 07-04 on January 11, 2007, the ECFSA renewed and continued the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA has adopted Resolution 07-10, which replaces and supersedes the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA must review and approve any contract, settlement, or other obligation, valued at greater than \$50,000, that binds or purports to bind the County or a covered organization, before it takes effect; and

WHEREAS, the County Executive or a "Responsible Official," as defined in Resolution 07-10, has duly submitted a request for review of the contracts, settlements, and other obligations listed on the attached document; and

WHEREAS, the ECFSA Executive Director, after consultation with the ECFSA Staff, has recommended approval of each contract, settlement, or other obligation via written correspondence to each ECFSA Director;

NOW, THEREFORE, BE IT RESOLVED, that the ECFSA approves the contracts, settlements, and other obligations listed on Group 3 of the attached document.

<b>GROUP 3</b>		
<b>Item</b>	<b>Description</b>	<b>Amount</b>
EC Department of Social Services – Service Contract – multiple providers	Contract to provide medical transportation via listed providers, not to exceed \$3,475,000 in total	\$3,475,000 est. annual combined total local Medicaid through MMIS MA Cap Chargeback
EC Department of Social Services – Service Contract – multiple providers	Children are ordered into the custody of the Commissioner of Social Services & are placed into foster care by order of family court.	\$35,000,000 - \$10,370,500 est. local share total
EC Department of Social Services – Service Contract – Educational Opportunity Center	Special TANF initiative called the Strengthening Families program that is designed to work with TANF families to engage the cooperation & commitment of non-custodial fathers in the care & nurturing of their biological children.	\$150,000 - \$0 local share.
EC Department of Social Services – Service Contract – Goodwill Industries & Mental Health Peer Connection	Employment participation initiative. Both agencies are to provide supportive interventions for clients to participate in work activities up to 30 hours/wk as required by current Federal regulations.	\$541,666 - \$0 local share
EC Department of Social Services – Service Contract – Amendment for Joan	Increase in the Full Services Schools contract to enable the expansion of casework support services	\$14,285 - \$0 local share

A. Male contract	to additional City of Buffalo Public Schools.	
EC Health Department Clinical Building – Purchase Contract – Altosid Larvicide	Larvicide required to operate project SWAT – 13 municipalities working with EC to fight West Nile and other viruses.	\$77,446.60 – local share of 64%, (approx. \$49,566)
EC Department of Social Services – Service Contract – Catholic Charities	Catholic Charities Closing the Gap Initiative places counselor staff in Buffalo Public Schools to perform an outreach specialist function.	\$457,143 - \$0 local share
EC Department of Social Services – Service Contract – Youth Board (designates specific providers)	Provides for youth programs as part of requirements of NYS Office of Children & Family Services & the EC Youth Bureau – counseling, tutoring, mentoring & recreation.	\$97,170 - \$0 local share
EC Department of Social Services – Service Contract – Compass House	Provides for youth programs as part of requirements of NYS Office of Children & Family Services & the EC Youth Bureau – counseling, tutoring, mentoring & recreation.	\$87,918 - \$0 local share
EC Department of Social Services – Service Contract – Be-a-Friend	Provides for youth programs as part of requirements of NYS Office of Children & Family Services & the EC Youth Bureau – counseling, tutoring, mentoring & recreation.	\$50,000 - \$0 local share
EC Department of Social Services – Service Contract – Franciscan Center	Provides for youth programs as part of requirements of NYS Office of Children & Family Services & the EC Youth Bureau – counseling, tutoring, mentoring & recreation.	\$106,464 - \$0 local share
EC Department of Social Services – Service Contract – Compass House	Homeless reimbursement program	\$127,491 - \$0 local share

This resolution shall take effect immediately.

Executive Director Vetter: “If I could continue with group four, again these were received less than 48 hours prior to this meeting and passed the deadline as we had set. The Commissioner of Environmental Planning, Andrew Eszak, said that the approval of these contracts is necessary to provide reasonable assurances that revenue is locked in place and these contracts are for federal community development. It is block grant money; they are to receive those monies and there is a \$0 local share. The staff would recommend that these be approved and do not require further approval from the Legislature. They appear to be regular business of Erie County. I would recommend Mr. Chair that group four be voted on as a slate.”

Chairman Baynes: “May I have a motion to approve?”

Director Kee: “I think we need to remind the departments that they really need to comply with the timeline that we have established. With that being said, I make a motion to approve group four.”

Chairman Baynes: “These came in yesterday?”

Executive Director Vetter: “These came in Tuesday.”

Director Keysa: “I notice the cover letter on that which seems to question whether or not it needs the approval of the Board. I don’t understand why that is the case apparently because they are all clearly over \$50,000.”

Executive Director Vetter: “Yes, these meet the requirements of the resolution passed by the Stability Authority.”

Chairman Baynes: “May I have a motion to approve group four?”

Director Johnson moved the following resolution to approve the contracts in group four; his motion was seconded by Director Kruly; without further discussion, the resolution was unanimously approved.

**Resolution No. 07-28**

**APPROVING CERTAIN CONTRACTS, SETTLEMENTS, AND OTHER OBLIGATIONS BINDING THE COUNTY OF ERIE**

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, the ECFSA first imposed a control period upon the County of Erie (the “County”) by adopting Resolution 06-49 on November 3, 2006; and

WHEREAS, incident to and in furtherance of the imposition of the control period, the ECFSA adopted Resolution 06-51, which authorized a process for approving contracts, settlements, or other obligations binding or purporting to bind the County (“contract approval process”), on November 3, 2006; and

WHEREAS, in adopting Resolution 07-04 on January 11, 2007, the ECFSA renewed and continued the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA has adopted Resolution 07-10, which replaces and supersedes the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA must review and approve any contract, settlement, or other obligation, valued at greater than \$50,000, that binds or purports to bind the County or a covered organization, before it takes effect; and

WHEREAS, the County Executive or a “Responsible Official,” as defined in Resolution 07-10, has duly submitted a request for review of the contracts, settlements, and other obligations listed on the attached document; and

WHEREAS, the ECFSA Executive Director, after consultation with the ECFSA Staff, has recommended approval of each contract, settlement, or other obligation via written correspondence to each ECFSA Director;

NOW, THEREFORE, BE IT RESOLVED, that the ECFSA approves the contracts, settlements, and other obligations listed on Group 4 of the attached document.

<b>GROUP 4</b>		
Item	Description	Amount
EC Environment & Planning – Receiving grant funds – Federal Dept. of Housing & Urban Development	2007 Federal Emergency Shelter Award	\$126,546 - \$0 local share
EC Environment & Planning – Receiving grant funds – Federal Dept. of Housing & Urban Development	2007 Federal Home Investment partnership & American Dream Down Payment Assistance Program	\$1,135,695 - \$0 local share
EC Environment & Planning – Receiving grant funds – Federal Dept. of Housing & Urban Development	2007 Federal community Development Block Grant, on behalf of 34 local governments comprising the Urban County Consortium.	3,296,459 - \$0 local share

This resolution shall take effect immediately.

Executive Director Vetter: “Mr. Chairman if I could, the items in the next section are items for individual consideration, but there seem to be significant questions with at this point. There are County representatives here to speak. The first one is from the Erie County Department of Public Works for a design supplemental for Elmwood Avenue. I think the question here was on distribution and if there is an overall project contingency. Could Commissioner Loffredo come and speak to us about this”

Commissioner Loffredo: “Good morning, my name is John Loffredo, Commissioner of Public Works. The contract that you have before you is for engineering services for a federally funded project of which the County is responsible for 20%, the federal government 80%. This is really a second change order to this contract. The first change order was in the approved amount of \$70,000. We only used \$66,500. The next request is for a change order to add to the contract in the amount of \$67,517 plus a contingency of \$18,983. So if you add those two up you get \$86,500 plus the \$66,000 that we used previously and that is the total amount of 153,000 that we are asking for as far as the total amount. The reason for the contingency is that this is a design phase and there are federal funds that match and once we get into this project that there are changes. Chances are that these contracts go one way

or another and we wanted a position stated so that we could approve those changes without coming back and take advantage of the timeline that the federal government has set up for this project so there is no delay.”

- Chairman Baynes: “Are there any questions for Commissioner Loffredo? If not may I have a motion to approve?”
- Executive Director Vetter: “Mr. Chairman, if I could, with this contingency, would this be designated for the vendor that is here or would this be a general contingency to be used by any vendor?”
- Commissioner Loffredo: “No, this is just for this particular contract. I know there are issues that you and I have to talk about with that other umbrella contingency.”
- Chairman Baynes: “Are there any further questions for Commissioner Loffredo? Thank you Commissioner. May I have a motion to approve this EC Public Works Contract?”

Director Johnson moved the following resolution to approve a change order for the Elmwood project; his motion was seconded by Director Kruly; without further discussion, the resolution was unanimously approved.

**Resolution No. 07-29**

**APPROVING CERTAIN CONTRACTS, SETTLEMENTS, AND OTHER OBLIGATIONS BINDING THE COUNTY OF ERIE**

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

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WHEREAS, the County Executive or a “Responsible Official,” as defined in Resolution 07-10, has duly submitted a request for review of the contracts, settlements, and other obligations listed on the attached document; and

WHEREAS, the ECFSA Executive Director, after consultation with the ECFSA Staff, has recommended approval of each contract, settlement, or other obligation via written correspondence to each ECFSA Director;

NOW, THEREFORE, BE IT RESOLVED, that the ECFSA approves the contract modification submitted by the Erie County Department of Public Works for design engineering related to the Elmwood Avenue project, as listed on the attached document.

Item	Description	Amount
EC Public Works – NYSDOT Design Supplemental & Change Order – NYSDOT, FRA Engineering	Design supplemental for Elmwood Ave. Signals Project.	\$153,000, local share of \$30,600 max.

This resolution shall take effect immediately.

- Executive Director Vetter: “The next item for consideration is from the Erie County Department of Mental Health in the amount of \$353,800 for counseling service. There are questions on this one, and I don’t know if Mr. Endres is here or someone from his department; Mr. John Greco.”
- “The question is, out of the \$353,800; \$80,050 is for Mid-Erie Counseling Services, \$54,000 for Horizon, and then \$219,500 that has not been designated to any particular agency at this point? My

understanding also, assuming approval is given by the Authority, that the Legislature has not approved yet by legislature approval?"

- John Greco: "That is correct. "
- Executive Director Vetter: "I guess the question is, is the \$219,500 for agencies under bidding process, and is it really a necessity to approve a contract for vacancies that have not been filled?"
- John Greco: "The funding is state dollars through New York State Division of Criminal Justice Service and the funding is time-contingent ,and I believe that that started back in January of 2007. We received the award notice in mid-March. What we were hoping to do is move the RFP process once approved by the control board and the Legislature to move forward and then approve a contract with the housing component of this contract once the review of the RFP's that have been received are completed."
- Director Johnson: "Mr. Chairman, I have a couple of questions. First and foremost, is this a first year grant?"
- John Greco: "This is the first year of this grant."
- Director Johnson: "Is this a three-year grant?"
- John Greco: "It is an eighteen-month grant."
- Director Johnson: "What is our maintenance of effort required that under this plan?"
- John Greco: "There is no County match required at all"
- Director Johnson: "No. I mean maintenance of effort; after the eighteen month period in which you have spent the \$353,800, what would be the State's requirement for the continuation of this?"
- John Greco: "There is no requirement specific to that. The grant does have the potential to be awarded for an additional year contingent on state and/or federal dollars available to continue."
- Director Johnson: "I would just like to say that usually grants coming through New York State from the Department of Criminal Justice Service have a maintenance of effort. I would just like to make sure that we are not approving something that, in 18 months, comes back to us saying that the Fiscal Stability Authority approved this and must come up with \$353,800."
- Executive Director Vetter "Mr. Chairman, if I could, we recommended three things with regard to this contract at the staff level. One, that approval includes that there are no expectations from the control board in terms of future funding. Two, that there be a proviso, once the agency has chosen the process, that a specific dollar amount be provided. Three, that approval is contingent upon approval of the Erie County Legislature."
- Chairman Baynes: "Does that help Mr. Director Johnson?"
- Director Johnson: "It does help. "
- Chairman Baynes: "Who would know better than Mr. Director Johnson? Any further questions? Sir, thank you very much. May I have a motion to approve the mental health service contract? "

Director Johnson moved the following resolution to approve the contract for counseling services; his motion was seconded by Director Kee; without further discussion, the resolution was unanimously approved.

**Resolution No. 07-30**

**APPROVING CERTAIN CONTRACTS, SETTLEMENTS, AND OTHER OBLIGATIONS BINDING THE COUNTY OF ERIE**

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, the ECFSA first imposed a control period upon the County of Erie (the "County") by adopting Resolution 06-49 on November 3, 2006; and

WHEREAS, incident to and in furtherance of the imposition of the control period, the ECFSA adopted Resolution 06-51, which authorized a process for approving contracts, settlements, or other obligations binding or purporting to bind the County (“contract approval process”), on November 3, 2006; and

WHEREAS, in adopting Resolution 07-04 on January 11, 2007, the ECFSA renewed and continued the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA has adopted Resolution 07-10, which replaces and supersedes the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA must review and approve any contract, settlement, or other obligation, valued at greater than \$50,000, that binds or purports to bind the County or a covered organization, before it takes effect; and

WHEREAS, the County Executive or a “Responsible Official,” as defined in Resolution 07-10, has duly submitted a request for review of the contracts, settlements, and other obligations listed on the attached document; and

WHEREAS, the ECFSA Executive Director, after consultation with the ECFSA Staff, has recommended approval of each contract, settlement, or other obligation via written correspondence to each ECFSA Director;

NOW, THEREFORE, BE IT RESOLVED, that the ECFSA approves the contract submitted by the Erie County Department of Mental Health for mental health counseling services listed on the attached document.

Item	Description	Amount
EC Department of Mental Health – Service contracts – NYSDCJS, Mid-Erie & Horizon	\$80,050 for Mid-Erie Counseling Services, \$54,000 for Horizon Human Services, \$219,750 for agencies under bidding process.	\$353,800 - \$0 local share

This resolution shall take effect immediately.

Executive Director Vetter: “Mr. Chairman, there were three contracts that were dropped of from the Board of Elections late yesterday afternoon. I don’t think there is anyone here from the Board of Elections and we haven’t had a good chance to review them so I would recommend those go on the slate for our next meeting.”

Director Keysa: “We also have that contract number three under the group one slate that we should add to list of items for our next meeting. I recommend that this contract be brought back with someone from the Division of Information Services to address certain items on this item.”

Executive Director Vetter: “Director Keysa, what would you suggest?”

Director Keysa: “We by-passed that one and we can table it until the end because the next contract will take a considerable amount of time.”

Executive Director Vetter: “I guess, from a staff level, I would suggest that we approve the other contract and have this one brought to our next meeting where someone from the Division of Support Services be available to address the questions on this.”

Chairman Baynes: “Could we have a motion to table?”

Director Kruly moved to table consideration of the contract for outsourcing mail services; Director Johnson seconded the motion, which was unanimously approved.

Chairman Baynes: “Our next order of business is the tax lien sale regarding Xspand. I understand there will be a number of representatives speaking on different aspects of this agreement. From the County we have Mr. Maciejewski. After him I understand we have Cheektowaga Town Clerk Mary Holtz and County Comptroller Mark Poloncarz.”

Joseph Maciejewski: “Thank you. My name is Joseph Maciejewski. I serve as Erie County’s Director of Real Property Tax Service and also as President of the Erie Tax Certificate Corporation (“ETCC”). Chairman Baynes, in your opening remarks, I appreciate your comments on thoughtful deliberation and I want to assure each and every one of you that we share that same sentiment and are here for thoughtful deliberation and it is our full intention to answer any questions that come about today. In that respect I just wanted to introduce those who will be speaking and those who will be available to answer your questions here today; they are Budget Director James Hartman, Comptroller Mark Poloncarz, who is also a Director of the ETCC, Deputy Comptroller Greg Gach, who serves as Vice President of the ETCC, Assistant Erie County Attorney James Tuppen and, as requested by Executive Director Vetter, we have brought representatives from Xspand-Bear Stearns and they are

Mr. John Garzone, Senior Managing Director and President, and Doug Badaszewski, Associate Director of Xspand-Bear Stearns.”

“With that, you have in front of you for purposes of discussion; this document here entitled “Erie County Tax Lien Sale Program” with the date of April 19, 2007. This is a summary of the documentation of things that we have already provided you. I just want to bring to your attention Exhibit II, a document that you have not been provided prior to this meeting but which is in this packet and which we will allude to as we go through our discussions.”

“If you look at the summary points on the first page or the cover letter what we are proposing to do is a bulk sale transaction to Xspand. This sale of Erie County tax liens went through the RFP process through the procurement procedures that are in place within Erie County code. This was also presented in committee to the Erie County Legislature and adopted by them. What we are proposing to do is to take the prior transactions which are known as Erie 1- 4 and we also have 2006 tax liens which are currently held by the County. We are also proposing to do a complete sale of those tax liens to Xspand-Bear Stearns. As you can see, the consideration for rolling up Erie 1-4 is we are looking at selling at a rate of 84.2% of the lien pool which is \$37 million, where we would be get \$31.479 million, and with the Erie County 2006 tax liens, we are looking at selling a pool of \$15.8 million at a rate of 105% which would give us \$15.883 million.”

“I would like to open it up to questions at this point and then we can take you through Exhibit I which will take you through the transaction.”

Chairman Baynes: “Mr. Maciejewski, I have a question on this April 19 report you just gave us. It is very clearly reported in the newspapers and with letters sent back and forth from the County as 105% - I had lunch with Mr. Giambra the other day - 105% for the sale and I am looking at page one of your summary; two-thirds of the sale represents 84% so that wouldn't be 105% total.”

Joseph Maciejewski: “That is on the prior sale. That is on the transactions that we are rolling up, essentially. They were prior deals. We are talking about the 2006 deal and the program that we have going forward as a result of going back out to the market with an RFP we were able to sell the 2006 tax liens at a rate of 105%.”

Chairman Baynes: “So the previous people that did the deal only paid you 84%?”

Joseph Maciejewski: “No, when the result of the RFP came back it, was broken down into rolling up the transactions of 2001 -2004; we asked for a price on that. So we already received an advance and already received residual payments on Erie 1-4. On the balance of the liens that are remaining.”

Chairman Baynes: “Which is one third of the liens?”

Joseph Maciejewski: “Correct; approximately.”

Chairman Baynes: “So only one third is at 105%?”

Joseph Maciejewski: “No, no, you can't look at it like that; you have to look at it as the 2006 unpaid tax liens.”

Chairman Baynes: “So the prior ones are 84%?”

Joseph Maciejewski: “In this proposal, that is what Bear Stearns Xspand is proposing to give us.”

Chairman Baynes: “Is there a reason why you keep calling it Bear Stearns Xspand?”

Joseph Maciejewski: “It is now Bear Stearns Xspand.”

Chairman Baynes: Sure

Director Keysa: “This is just for clarification; 105%; that is of the basic tax that we are due?”

Joseph Maciejewski: “That is on the unpaid taxes as off the last week in November that we purchased tax liens on behalf of the County. It is on back taxes remaining uncollected. If you take a look at exhibit II.”

Director Keysa: “Does that include the interest?”

Joseph Maciejewski: “Yes it does.”

Director Keysa: “There is not any future interest amount?”

Joseph Maciejewski: “No it does not. If you take a look at Exhibit II.”

Director Keysa: "They are willing to pay 105% on that because they are going to get future interest on that?"

Joseph Maciejewski: "Well, they would hope to, I believe, at some point but as you can see, on Exhibit II we have a ten-year history of the collection of unpaid property taxes in Erie County. Just to answer your question, Director Keysa, take a look at the bottom for 2006. The total general property tax level, all purposes which is all levels of government we guarantee taxes was \$540 million which left a balance of uncollected as of the date of the purchase of tax lien certificates a \$15,127 million, which represents a collection rate prior to doing anything with Xspand-Bear Stearns of 97.20%, so that amount that we are receiving, 105% is on the uncollected liens as of the tax sale date on the year of the levy. So for the uncollected for 2006, Bear Stearns Xspand is willing to pay us 105%. If you take a look at the history of ten years so you can see that 97.2% versus 96.66% in 1999; or 94.95% in 1998; the far right column is the amount of taxes that are recovered as a percentage of total uncollected. Over the 1996 to 2001 period prior to selling the liens to Xspand, we collected 70.83% on average of those uncollected taxes. Since we entered into an agreement with Xspand in years 2001-2004 the average has gone up to 82.86% of the recovered taxes that were uncollected at the time of the tax lien sale and we have taken these numbers out past the redemption period that we used to do foreclosure so that we did not in any way shape or form try to mislead anybody in any way. If you look at the second column from the right, the total uncollected taxes covered over the next three years with interest after we purchased those certificates and taken beyond the redemption periods are the result of our foreclosures when we were in the business."

Chairman Baynes: "Does anybody have any questions?"

David McNamara: "I think, just for the sake of clarity going forward; what we are talking about is selling two pools of assets.?"

Joseph Maciejewski: "That is correct."

David McNamara: "One pool, the larger of the two, would be owned by the ETCC?"

Joseph Maciejewski: "You are correct."

David McNamara: "The other pool, the smaller of the two, would be owned by the County and that pool is priced at 105%?"

Joseph Maciejewski: "That is correct."

David McNamara: "The larger pool is priced at 84.2%?"

Joseph Maciejewski: "Correct, and as a result of doing the RFP, on both of these numbers Xspand was higher than the other company that bid on us."

David McNamara: "What agreements govern the sale of these two pools of assets? Is it combined in a single agreement? How is that being effectuated legally? That is my question."

Joseph Maciejewski: "I am going to defer to Mr. James Tuppen on that question."

Chairman Baynes: "Could you come to the podium so that we can record this? Could you state your name and title for the record?"

James Tuppen: "My name is James Earl Tuppen, Assistant Attorney for Erie County; I also serve as Assistant Secretary to the ETCC. Your question had to do with the agreements. There are two agreements as to Erie County tax liens, some of which are owned by the ETCC, and some of which are owned by the County of Erie. There is a middle group because Erie County has a significant residual interest in the older pool of liens. The ones before which are owned by ETCC at the present time, Erie County has a significant residual interest in those liens. All interests are being sold. The best answer to your question is that there are two agreements; one agreement is with PPTS Xspand, which is a purchase and sale agreement, and that has been submitted for your approval. There is a second agreement that has been provided to you which Erie County is not a party to, it is a sale and between PPTS and ETCC."

David McNamara: "The purchase and sale agreement identifies the County as the seller."

James Tuppen: "Correct, the county is essentially conveying its interest in the 2006 liens that it owns and its residual interest in the older pool."

David McNamara: "By what agreement is the tax certificate conveying its interest in the sale and assignment agreement to which the County is not a part of?"

James Tuppen: "It is an agreement between PPTS Xspand and ETCC."

David McNamara: "The purchase price there is in the form of debt forgiveness plus \$450,000 in debt amounts."

James Tuppen: "I think that is fairly accurate, yes sir."

Director Keysa: "What I understand here is that the ETCC is not a covered agency?"

James Tuppen: "It is my understanding that it is not that I know about, but the college, for example. I am not aware of others."

Director Keysa: "The library."

James Tuppen: "The library itself?"

Director Keysa: "It is and is the ETCC run by county personnel?"

James Tuppen: "No sir."

Director Keysa: "It's not? Who are the officers of ETCC?"

James Tuppen: "Directors or officers?"

Director Keysa: "Officers?"

James Tuppen: "President Maciejewski, VP Greg Gach, Treasurer Budget Director Hartman, Secretary Larry Rubin and I am Assistant Secretary and I am a County employee. There are three directors."

Director Keysa: "Who are the Directors?"

James Tuppen: "Rick Smith, Paul Sullivan and Donald Curcio and Joel Giambra. There are five directors, and three independent directors."

Director Keysa: "And how are they selected?"

James Tuppen: "How are they selected? Well there has been a change in membership over time. They were nominated by the sole member as I recall. For example the ..."

Director Keysa: "Who is the sole member?"

James Tuppen: "That is Joel Giambra; he was the sole member/creator of the development corporation and, like I said, over time the board membership has changed, most significantly relative to compliance with Public Authorities Accountability act of 2005 whereby there was a change, I don't want to get into the details, in which an additional independent director, a majority of the board are independent directors at the present time."

Director Kee: "How is the sole member changed?"

James Tuppen: "I don't believe the sole member is changed; he creates the corporation and that is its function."

Director Kee: "So two years from now, the sole member is Joel Giambra?"

James Tuppen: "It is not an *ex officio* matter, so I believe the answer is correct."

Chairman Baynes: "So after he leaves office, he is still in charge?"

James Tuppen: "No, the sole member is not in charge; the Directors are in charge."

Chairman Baynes: "Who makes the selection of the Directors?"

James Tuppen: "I believe the other Directors do at this point."

Chairman Baynes: "Who appointed the original Director?"

James Tuppen: "The original directors were, I believe, nominated by Joel Giambra."

Chairman Baynes: "So he put them in?"

James Tuppen: "The original Directors, yes sir."

Chairman Baynes: "And he is not in charge?"

James Tuppen: "Not at present, no sir, the Board is, with three independent Directors."

Director Kruly: "Is Rick Smith the same guy trying to help get funds for the ethanol plant?"

James Tuppen: "Obviously, it is the same name; I don't know that for sure. The guy I know wears a cowboy hat and cowboy boots."

Director Kruly: "It is. Mr. James Tuppen do you represent the County in this deal or the State?"

James Tuppen: "I represent the County of Erie."

Director Kruly: "How do Damon and Morey fit into this?"

James Tuppen: "They serve as counsel to ETCC."

Director Kruly: "Isn't it unusual situation for the company they are working with, Xspand, to pay for the County in this deal according to this contract?"

James Tuppen: "I think it is and I am proud of it. Thank you. Yes, that cost is going to be paid by the buyer."

Director Kruly: "Don't you think this is a conflict of interest?"

James Tuppen: "Absolutely not, it is an expense that they are going to incur but there is no allegiance to the buyer."

Director Kruly: "Who do Damon and Morey report to?"

James Tuppen: "ETCC."

Director Kruly: "Not to the taxpayers; not to Xspand?"

James Tuppen: "Ultimately a bill will be tendered. Damon and Morey most certainly do not report to Plymouth Park Tax Service. Mr. Wolf and Mr. Cashmore are here and can probably better explain that, but that is my understanding."

Director Keysa: "Mr. Wolf is the prior County Attorney?"

James Tuppen: "Yes and he is also the prior Secretary to the ETCC."

Chairman Baynes: "I have a question on Exhibit I of your Erie County Tax Lien Program that was delivered today. Maybe it would be better if Xspand answered these questions."

Joseph Maciejewski: "I would just like to refute your statement. This has been provided prior to today."

Chairman Baynes: "Well, no I have never seen this and it's dated April 19<sup>th</sup>."

Joseph Maciejewski: "It has been submitted previously and that date is just the presentation date."

Executive Director Vetter: "I think you might be talking about the Exhibit III."

Director Kruly: "Have you provided the final closing documents to the County Legislature on this deal?"

Joseph Maciejewski: "Have sent that over Jim?"

James Tuppen: "Yes."

Joseph Maciejewski: "We have."

Director Kruly: "It includes all the liens and supporting documentation?"

Joseph Maciejewski: "There are 37,000 liens in the package Director Kruly. They are available on CD but to print them out would be a waste."

Director Kruly: "So you have not provided this to the Legislators?"

Joseph Maciejewski: "They haven't asked for it, but we would be more than willing to, but I am not sure what they would do with it."

Director Kruly: "You are asking us to approve something but you gave something to the Legislature that you haven't given to us."

Joseph Maciejewski: "What is that?"

Director Kruly: "The full proposal?"

Joseph Maciejewski: "There is nothing different with what you have and what the Legislature has."

Director Kruly: "So the CD can be made available to be examined?"

Joseph Maciejewski: "We could if you would like; we can provide that."

Director Kruly: "That is a portion of the contract?"

Joseph Maciejewski: "That exhibit gets filed at the closing across the street at the County Clerk's Office. All the exhibits from Erie 2001-2004, they are quite extensive. We have the tax liens that are available in the portfolio on a CD if you would like to see them. My question to you is we really just take a look at that and come up with the amount of uncollected for the total liens and interest that gives us the numbers that go into this and we probably run it four times because it is very fluid as far as collections go."

Director Kruly: "Are the numbers contained on exhibit one based on those CD's?"

Joseph Maciejewski: "Yes they are."

Director Kruly: "For example, \$12,500,000.20 that is the principal as of December 31. If we were to examine those discs it would give us these numbers?"

Joseph Maciejewski: "Yes it would."

James Tuppen: "Let me qualify it if I could. This was, of course, created at the time the RFP were issued; now there have been intervening collections since that time, which, if you look at the disc today, will not be reflected on a historical disc. They are reflected on current records."

Director Kruly: "The point I am trying to make is that, in the RFP process there is a bottom line ticket of \$47 million; that is the figure that is in this memorandum. Short reflected adjustments for intervening collections."

Joseph Maciejewski: "That is on the schedule on Exhibit I; intervening collections from 1/12/07 to 4/30/07 have been projected at \$2,660,197. We are collecting today. Our cashiers are collecting from anybody who has walked in and wants to pay their unpaid 2006 taxes. They pay each day; that is standard operating procedure."

Director Kruly: "Do you have to have staff to do collections while this is going on?"

Joseph Maciejewski: "Do I have the staff to have somebody walk in?"

Director Kruly: "Is that staffing that you have sufficient to take care of the people walking in and paying?"

Joseph Maciejewski: "Yes, there is a part time cashier and a full time cashier."

Director Kruly: "Is someone available to collect?"

Joseph Maciejewski: "To be honest with you there might be walk in traffic of 10-15 a day. The majority of the 2006 taxes that are collected go to our lock box because we now send out the receipts with the PO Box that go back to Chase Bank because there is no staff left but there is a cashier and a part time cashier."

Director Kruly: "Mr. Tuppen, I have a question for you, as I think it relates to the County Attorney's office. I understand that you have worked there for many years."

James Tuppen: "Twenty-eight years."

Director Kruly: "Some of us who have been around the County for a long time. Contracts with the County usually have insurance certificates, affirmative action, regulations; things like non-collusion in the bidding process and a variety of other boiler plate things that are pretty standard in most contracts that I have seen over the years. Why is none of that attached to this document?"

James Tuppen: "This is a sale contract. It is unlike most other County contracts inasmuch as the other County contracts are typically procurement and/or service contracts."

Director Keysa: "But you wouldn't have an anti-collusion provision in there?"

James Tuppen: "If it was set up as a formal bid under the General Municipal law 103, it is required. It is not required in this instance because an RFP was issued and written responses were received. This was late January and the numbers in the proposal that was approved by the Legislature and the ETCC. Those numbers are in the PPTS Xspand proposal and, of course, they are in today's settlement memorandum. I am referring specifically to the \$47 million figure. That was the price that they want."

Director Kruly: "There is a contract we just approved for \$129,000 for an engineering study. That engineering contract has insurance certificate, affirmative action and all the other stuff and also has about 30 pages of procedure on how the contract would be implemented."

James Tuppen: "That involves the hiring of somebody to provide a service and is a continuing relationship. My point with a sale contract is simple, "give me the money, I give you the liens."

Director Kruly: "Are there some side limits that exists that explain how this is done?"

James Tuppen: "I know there is a side letter that was asked for and provided by..."

Director Kruly: "I am familiar with the one that says the numbers are still the same. I am talking about other things that concern the operation of how they will function?"

James Tuppen: "Not as far as I know sir; no."

Joseph Maciejewski: "There is side note that allows the County, after the transaction closes, to audit the numbers that are on the documents before you."

Director Kruly: "You can tell us that there no side letters?"

James Tuppen: "That is the one side letter."

Director Kruly: "But there are no side letters that explain functions?"

James Tuppen: "Not that I know of."

Director Keysa: "By the same token, are there any terms or limitations?"

James Tuppen: "The limitations on the way in which the contract acts are well defined. They are in the Erie County tax act. They are buying tax certificates Erie County created under that act. The only enforcement remedies available to any owner in Erie County or other wise are provided for in that act. So, yes sir, I do know exactly how they are going to foreclose. They are going to follow the law."

Director Keysa: "And they have to follow them whatever the limitations are in term of interest?"

James Tuppen: "Absolutely. In a "stand in his shoes" is the easiest way to think about it; 18% is what accrues if the County owns it the same thing accrues if anybody else owns it."

Chairman Baynes: "How much do you charge presently for the first year somebody owes taxes? Is it 18%?"

James Tuppen: "By the end of the year, 18% has accumulated. It is penalty and interest. Please understand the taxes are initially levied early; I call that the base tax amount. If it goes unpaid through the third week on November the County conducts, 11 months after lien date, a tax sale, where the tax sales certificates are created. Now they have accrued certain penalties in interest at the end of November and as of December 31 which I believe corresponds to our data for accrual 2006 liens, I believe that it is the base amount of 18%. That is your base tax certificate."

Director Keysa: "That continues to gather interest after that?"

James Tuppen: "Yes sir, and there it is much more clear it 1.6% a month. Early on there is a 5% penalty but once the tax certificate is created it is regular; 1.5 % per month."

Chairman Baynes: "So right now, if the County was to be owed money, it would be 5% or 7%?"

James Tuppen: "At this time of year it is April. If you are talking about a property in the suburbs there is a local town tax collector involved at this time of year. In the City of Buffalo, the County department formerly known as finance in the City of Buffalo would receive 2007 taxes, they are late and there would be an appreciation or accrual penalty of interest. I don't claim to know the number right now."

Joseph Maciejewski: "It is 1.5% form February 15 and 1.5% for every month after that."

Chairman Baynes: "So Xspand is saying it is 1.5% every month."

James Tuppen: "What Xspand is buying are tax sale certificates and those certificates very clearly accrue interest at 1.5% a month."

Joseph Maciejewski: "Right now Chairman Baynes, Xspand has been acting a servicer of those liens. The County of Erie or ETCC has been accruing that interest in the form of a residual payment once the note has been paid off."

Director Kee: "One of the reasons for a proposal like this is the County is essentially out of the foreclosure business. If you look at the year 2001, prior to having an outside entity gauging this activity, we recovered taxes with a total of 71.14%. Now that is substantially lower than let say 1996 when the County is engaged in this and the County was engaged in 2001. What led to the pretty significant drop between the rate of collection in 1996 and 2001, even though during both years the County was involved?"

Joseph Maciejewski: "What I really think is the tale is what happened between 1996-1998 where it went from 80.41% to 61.37%. You have to analyze it year by year to see what actually happened. Obviously if you take a look at the increase from 1996-1998 there was an increase in the levy for County tax purposes. If you look at the levy in 1996 where it is \$469 million; then look at 2001 it was \$424 million. So there actually was less of a levy. To keep it in simple terms, which would lead to a lesser amount? If you look at the uncollected in 1996 was \$22.1 million; the amount of uncollected in 2001 was \$18.2 million."

Director Kee: "Now let me ask another question. You said in this document that if the County were to get back into the tax lien business it would cost \$600,000?"

Joseph Maciejewski: "That is correct, that is going back to...go ahead I will answer your questions."

Director Kee: "So the County has effectively been out of this business for about four years. Is this correct?"

Joseph Maciejewski: "Slowly and gradually. Yes, staff has been eliminated through layoffs and through attrition and we have in fact looked at reengineering the department in better ways and more efficiently. I will be coming back to this board at some time. I did speak to the finance committee on an efficiency grant request that will be coming forward regarding and automated system of people calling in and tracking down information because we just don't have the bodies anymore."

Director Kee: "If you think about it Joe; in my view, this is a public function that the County has historically conducted. Now we are in a situation where, because of budget cuts, things were probably not well thought out; but we are selling our future here. If the County were to get back into business, how much time would it take your department to get you guys back in the business?"

Joseph Maciejewski: "That will be a function of the budget and a function of what the Legislators feel is in the best interest of the taxpayers and I can't predict what that is going to be and if the Legislature would do that and if this County Executive or any future County Executive also agree that we need to get back to the business. I don't believe we need to get back into the business. I think we are going backwards and what we are doing ns what we have been doing, the numbers have shown that this is cost productive. The numbers have shown that model has evolved. Back in 2002, there was state legislation that created the Municipal Bond Bank Agency. The County of Erie looked into the product that was being offered by the Municipal Bond Bank and thankfully we did not enter into a contract with the Municipal Bond Banking Agency, because we have seen what has happened in the City of Buffalo with that program. We did not want to go down that road; we chose to take the model that was out there at the time, which was an advance with a residual where the County retained the 18%. We went out into the financial community, Xspand was there and we feel that we had negotiated the best deal at that time on the model that was available. We have seen this program evolve over the years. Yes, the County of Erie needed to do that to fill some budget holes. Now we got together, and I will compliment Comptroller Poloncarz, and sought out a better deal. The ETCC agreed with our Directors that we wanted to go out with an RFP to find out if there was a better evolution of this process. We feel that there was and I don't know how any one can sit and look here at the lien pool and the collection history, take a look at 2006 and say we are going to give you 105% up front to me and with all due respect that is a no brainer."

Director Kee: "Let me get back to this notion that the County used to be in the business of foreclosure, I look at this and say it looks like the County just threw up its hands and relinquished its job. Would you like to comment on that?"

Joseph Maciejewski: "I disagree with that. I have been involved since 1996 with the foreclosure process, with the staff that we had at the time, we were able to do the foreclosure procedures through assistance with the County Attorney's office and as I noted we had to sub out the searches; we did not have enough

staff. That was at that time a \$450,000 - \$500,000 bite in the budget. Taking a look at that and moving forward, if we were to get back into that business, that includes fringe benefits and salaries along with increases in the contracts over the years and increases in the cost of publications that it would be \$600,000 but if you take a look at the collection rates since 1996, they have increased steadily since we decided to go with a servicer with an advance and residual model continued in 2002 to go from 95.67% to 2006 that we are collecting 97.20%. So yes, I disagree, the fact that we are not doing foreclosures like we used to the fact is we are getting more money up front so that we don't have to do as many foreclosures. Xspand has done foreclosures. I still continue to be the referee as the Tax Act says and what Mr. James Tuppen has stated. When we assign a tax lien to anyone and we have done this in the past and with prior administrations what we have assigned tax liens to wither municipal corporation or individuals who have a desire, they still stands in Erie County's shoes they still stand in Erie County's shoes, that the function regards to the law which is the Tax Act and foreclose just as we would.

- Director Kee: "So if the County were to get back into the business, how much lead time would you need?"
- Joseph Maciejewski: "I would have to say two years to get back in, and then realistically it would take us another two years to foreclose on the 2006 liens. So you are looking at 2009 before we could have our first sale."
- James Tuppen: "Under the current arrangements, and I am talking about the Erie 1-4 deals, while Erie County is privileged to own any tax certificates in 2006 or 2007, Erie County is limited in its foreclosure options on those certificates. At the present time, because there are notes outstanding from Erie 3 and 4, Erie County cannot actively foreclose any certificate it owns. This may not be a practical problem but I think the notes for Erie 1 & 2 were paid off ahead of schedule, and the likelihood is that 3 & 4 would also be. The point I am trying to make here is that there is always a delay. The 2006 tax liens will not be ready for foreclosure until December 1, 2008. That is the first moment at which Erie County could get back in the tax foreclosure business."
- Director Kruly: "I am not sure you have answered this in here, but how many times has Xspand been making foreclosure sales since they have been doing it?"
- James Tuppen: "I know it is in the hundreds but I don't know the actual number."
- Director Kruly: "Is it one or two sales?"
- James Tuppen: "No, No. My information is from summonses and complaints that I see come in."
- Director Kruly: "Do they do it like the County has done it or ...?"
- James Tuppen: "No, no they do run offs; in other words a particular property is offered for sale. What we do is try to schedule quite a number of those runoff; they are individual properties that are acted on."
- Director Kruly: "How many have been done?"
- Joseph Maciejewski: "Two."
- Director Kruly: "In four years?"
- James Tuppen: "Well you have to keep in mind that they have only done foreclosures on those liens that have become ripe for foreclosure. So the liens that I believe where in Erie 3 that became available and soon in Erie 4, the liens in Erie 1 were liens that the County has very little success in collecting and some of the liens went back 20 years so what Xspand did through their due diligence, they are going to go out and attempt to foreclose on properties where they feel they are going to have the most success. Recoup the taxes in addition to the bankruptcies include foreclosure and in addition to that one of the condition that Erie County legislature put on, both my office and Xspand was that we show the compassionate side and try to enter into forbearance and to my knowledge Xspand has been very successful in reaching out to the community with forbearance known as "Payback Agreements" whereas Erie County, not Xspand, has also offered to senior citizens and disabled folks the opportunity to make payment plans with us and we did not sell those to Xspand."
- Director Kruly: "Shouldn't that be written into the contract?"
- James Tuppen: "I am not adverse to that."
- Director Kruly: "If you are looking for Xspand to do something with forbearance then it should be written into the contract."
- James Tuppen: "I believe Xspand Bear Stearns would be amendable to that."

Director Kruly: "Mr. Maciejewski, refresh my memory on the Erie County Tax Act and what it provides for periodic payments through the course of the years."

James Tuppen: "I wrote the legislation that was enacted in Albany and signed by the Governor. While there is so called periodic or partial payment in the Tax Act and it has been in there for twenty-odd years, most recently the Tax Act now permits any taxpayer to pay any amount at all any day of the year with penalties and interest accruals, etc. What I am getting at is that you don't have to pay one half or not less than half; you don't have to pay 100% as the rule used to be, any amount can be accepted by any tax collector at this time."

Director Kruly: "On the Xspand website they say that you can make monthly payments."

James Tuppen: "That is Xspand's business."

Director Kruly: "How does that comply with the Tax Act.?"

James Tuppen: "I don't see a problem there. They can accept any amount that they want. They own the lien and could choose to take less if they wanted to. It is not our lien anymore and they can accept anything that they feel like and/or how often. I would like the representatives from Xspand-Bear Stearns to come up and maybe answer some questions on that."

Chairman Baynes: "Could you hold off we have a couple of more legal questions?"

Director Johnson: "This is a very minute question, but I would like to get some details on; other than this contract with Xspand, if it was executed who would be issuing the discharge notice on the foreclosure papers and how often?"

Joseph Maciejewski: "As things are currently, now a private contractor, at the present time with respect to transactions known as Erie 1-4. They are called a local assignment which was filed in the Erie County Clerks Office with each one of those transactions. Those global assignments list literally thousands of liens. There are records in the Clerk's Office at the point at which a property owner pays Xspand, redeems their certificate at that point and Xspand issue a release of discharge to be issued and then filed in the County Clerk's Office. That is how it works now."

James Tuppen: "In the future, I believe it will work in a very similar fashion although without the custodian banks, trustee, etc where it used to be a bit complicated. This will be straight forward, an outright sale, we will assign the liens to you, they will file those liens I presume and as they get payment there is redemption occurring, they will eventually get discharges. Obviously I can't speak for an entity that I don't represent, but that is how it has worked and that is how it will work."

Director Johnson: "Do you have any information on once the payment is made, what is the approximate manner that those discharge notices are provided?"

James Tuppen: "I have occasionally heard anecdotal evidence, typically complaints, there may be a delay but I don't know and what the effect is. Sounds like there is a delay from the County."

Director Kee: "It seem that from what you are saying those Erie years 2002-2005, some of those years are available for foreclosure right now; is that correct?"

James Tuppen: "Erie 4 would not be eligible for foreclosure until December 1, 2007, with a sale date usually in the spring of 2008. Erie 3 is ready and there have been foreclosures done with respect to Erie 2 and we did have some things from Erie 3 in the sale that we did last October."

Director Kee: "What if we were to unbundled those and start building a structure where the County is only going to have Xspand work on the old liens that are subject for foreclosure. What is your opinion of that Mr. Maciejewski?"

Joseph Maciejewski: "My opinion of that; I would hate to see two separate entities doing the same function when I don't think that it is very efficient. Is this geared to your point about getting Erie County back involved in the business of doing our own foreclosures and getting rid of Xspand? There is still going to be some cross over and it's a duplication of service to me. That is my opinion."

Director Kee: "I'd like to refer to a comment Mr. James Tuppen made a little bit earlier. How many complaints have you heard?"

James Tuppen: "It is merely anecdotal, attorney's talk or I hear from people that they are unhappy with the 1-800 number and when that happens I go to someone I know directly with Xspand and we get results. I don't pretend to know the phone bank business but it can be a problem but we get through it and if they get in contact with me I get right to the heart of it."

Director Kee: "Mr. Maciejewski, how many complaints do you get?"

Joseph Maciejewski: "Again, it's really not a complaint; it's more like: "Can you help us get in touch with the project manager or somebody at Xspand to help move something along?" We have a direct line with Jackie Alfieri, our project manager, as well as do all the town tax collectors. Towns also have a direct line to Xspand as well. We also have access to Xspand's collection system. It is not given to the general public but the town tax receivers, if they want it, can sign a paper saying that they will not share to the public as it is proprietary and they are allowed to have the number. We have the ability on an inquiry basis only to look at information and expedite any of those complaints. We have pretty much taken care of this and, as you remember, we all had several complaints when we were in the business; it is just the nature of the business. You are talking about a sensitive issue with taxpayers that can't or don't pay their taxes."

James Tuppen: "The majority of the complaints have to do with telephone contact with Xspand and the inability to get good pay out figures. I believe it has something to do with the fact that the debt collection reporting act applies to PPTS, so they have to be careful about whom they give information to. It's not necessarily a problem but that is one of the issues that cause people to call us."

Director Keysa: "One of the issues that was brought up at the last meeting was concern on behalf of municipalities and the Erie County Association of Governments that a number of the communities and towns, Evans especially, have had a significant number of properties for one reason or another have tax liens on them, which are now vacant. Mary Holtz is here to speak about residential areas in Cheektowaga and the Mayor of the Village of Angola is here to discuss a number of vacant properties on Main Street. They have spent a lot of money trying the upgrade Main Street but are running into a lot of buildings that are vacant with tax liens on them. As to the balance of the Town of Evans, Lori Szewczyk is here to discuss what I believe are predominantly residential areas. There is concern out there that the way the taxes and the tax lien foreclosure process is administered is contributing to a developing blight within those communities. It is a concern that, as properties sit there with those liens, possibly some properties will require demolition with demolition costs, some of the land will no longer be of the value of the cost of the demolition, much less other taxes. The other case that can be made is with regard to property assessments which may have been over-assessed and that now have taxes that are making it impossible to have someone come and buy those properties, buy the tax liens and also pay for rehabilitation necessary to get the building back in shape."

"Another issue is that the mortgage or the tax foreclosure process has been a leveling process, which is to say, it is a way of correcting that problem. You would sell the property for whatever you get for it. Say there are \$10,000 of taxes on it; you take \$1,000 worth of payments so that the property is put back into use of some sort. There is concern that this is not taking place. Can you address that; address how this will occur because, there is an absolute need for this?"

Joseph Maciejewski: "Well, I am going to take you just a little bit through the process that a majority of you already know. Erie County guarantees the taxes of the towns, villages and school districts of Erie County."

Director Keysa: "I recall being part of the discussion on that with Ned Reagan when it was extended to the villages thirty-some years ago."

Joseph Maciejewski: "Just so everyone is aware that if, say, the Town of Lancaster, or Hamburger Central School District or the Village of Angola have a budget that is a million dollar budget and they only collect \$750,000, the County makes up the difference."

Director Keysa: "That is where the County provides funds and it a regional aspect of the County government to try and foreclose tax liens."

Joseph Maciejewski: "Correct, so Erie County owns the tax liens, we make them whole and now Erie County is left holding the bag. We have to come up with a system to take into consideration those types of scenarios. To say that municipalities in Erie County are complaining about this, I can honestly say I have only been approached by two communities; the Town of Evans and the Village of Angola. I can assure you, and I know the Mayor and Lori can attest, that we have had several meetings and we have sat down to consider options and assess remedies to this that are the same scenarios that we has when we worked with West Seneca on Madison Wire, when we worked with Tonawanda on taking down the grain mills. We sat down and negotiated procedures to so that. I have sat down with Lori, the Mayor and the trustee and have conveyed that there are ways to do this. We could take those back from Xspand and assign them to you; they did not want to do that. We told them that they could use Community Development block grant money and I have not seen that happen. We have offered alternatives. The meetings that we have had, the project managers have phoned in from New Jersey. We have sat down and met with them on several occasions. For the Mayor of Angola to come up here and criticize the County and Xspand for what we have done, I really was surprised by that, especially after all the time and consideration we have given them. I have been working with Lori on exemptions, I have been looking at home-buyer exemption with them and construction

exemption legislation with them so to get the bottom of the question. Stan, there are opportunities for local municipal corporation to take property from us that we consider REO. If a property does not sell at a foreclosure sale the ETCC and/or Erie County has a right to take back those properties which then becomes "real estate owned." We then try to market those properties. We try to run our office in government similar to a business. We are not in the business to give property away to anyone, even municipal corporations, for nothing where we have already guaranteed their budgets and they have opportunities that Erie County doesn't have through Community Development block grants. What we are asking them to come up with is a proposal. That local municipal corporation and their elected officials need to come to the table without their hand out saying "Here, Erie County, just bail us out." That is not going to work."

- Chairman Baynes: "So when you but back this property from Xspand, how much do they charge you to buy it back?"
- Joseph Maciejewski: "Full value."
- Chairman Baynes: "Anything after that? Do they charge you interest?"
- Joseph Maciejewski: "Whatever interest is on there. There is a provision in this contract that was adopted by the Erie County Legislature, it was an amendment that if there is something that we feel a lien was sold and it is key to economic development in Erie County we have the right to take it back and you know what we should and at a discount!"
- Chairman Baynes: "What is that discount price?"
- Joseph Maciejewski: "I'm sorry; let me be clearer."
- James Tuppen: "Please don't talk about properties when you mean liens. I just want to make the distinction."
- Chairman Baynes: "Excuse me."
- Director Keysa: "They own the lien but they don't own the property. They are not responsible for the maintenance on the property?"
- James Tuppen: "That is correct."
- Chairman Baynes: "That is a whole different issue; maintenance on the property."
- James Tuppen: "It is the same as if a judgment creditor had a lien; it happens to be a tax lien which has its own super priority *vis-à-vis* mortgage liens, etc."
- Chairman Baynes: "So if Xspand is getting 18% on those liens, a town wants it back you're going to buy it back at 9%?"
- James Tuppen: "No, specifically, I will use out of Erie 1-4 as an example; 84.2% of the amount is going to be paid through Erie County or ETCC. If that particular lien has to do with a property that is abandoned or underutilized, the municipality can then approach PPTS through Erie County, where Erie County has the right to buy back that same lien at 84.2%; it just goes back, we would expect the town or village to make us whole for that because they have been for many years and we would pay the same amount that 84.2% and 9% interest not 18%, and insofar as Xspand or PPTS has incurred any costs on that line or spent money to try and reinforce it we have to reimburse them, but it is a discount. It is 9% and it is not the face value of the certificate, it is what they paid us for it."
- Director Keysa: "Is that specified in the contract?"
- James Tuppen: "Absolutely, sir. I would credit Legislator White for that. We had quite a brainstorming effort to avoid the same problems that the City of Buffalo experienced, very significant problems, I might add, with their transactions with the Municipal Bond Bank Agency. Buffalo ended up in a situation where the Municipal Bond Bank Agency said "pay me the full amount - that is the only way you will get control of these liens." We have designed a procedure that, if you want control of a lien, you have to pay, nothing is free, but we have the right to take back any lien from Xspand for underutilized properties."
- Director Kruly: "The 9% buyback there is a requirement that buying back all the expenses related to that must be taken care of plus 9%. In the other proposal that the County received from ATH, that proposal says in order to facilitate the revitalization of communities in Erie County, all TC's assigned to purchasers shall be freely assigned without limitation and the entity. So obviously there is some value that Xspand is recouping and I am wondering if the difference between 103% and 105% is narrowed somehow, I am wondering if you looked at that in terms of evaluating one bid versus another?"

Joseph Maciejewski: "Yes we did and I think you may be misunderstanding ATH's response. They believe that they reserve the right to assign those liens to a third party. That is our understanding and we did not want to see that happen."

Director Kruly: "It doesn't say that in the proposal."

Joseph Maciejewski: "That was our interpretation and in speaking with them we specifically asked that question in our due diligence and they could not tell us definitively upon buying those liens that they would not sell those liens to a third party. We would then be so far removed from establishing a relationship with where these liens are; so yes that was considered in our scoring and we chose Xspand Bear Stearns."

Director Keysa: "A point of clarification here. When I am looking at your exhibit II, you have total of uncollected taxes recover the past three years on the second column on the right and the last column is recovered taxes with percentage of total uncollected?"

Joseph Maciejewski: "Including interest."

Director Keysa: "I was going to say that includes interest, so in reality, where you are showing an average of 82% recovered it is probably closer to 70%?"

Joseph Maciejewski: "On the base amount?"

Director Keysa: "Yes."

Joseph Maciejewski: "I think it is all relative based, if you take the interest out, on the uncollected. It would be a wash then but it would still be in the 80's."

Director Keysa: "What we are looking at here is the recovery of the tax plus interest and we are comparing that to base tax plus a limited amount of interest?"

Joseph Maciejewski: "No, almost 18%."

Director Keysa: "Almost 18%, but that amount that is in that recovery may include interest."

Joseph Maciejewski: "There really is no other way to look at that, Stan, because it is each of the years it is 1997, 98, 99 and 2000; it is three years and in addition to what I said earlier, it is the redemptive period in the foreclosure so that it is everything, apples to apples here that were compared and not leaving out a redemptive period were thousands of dollars come in prior to."

Director Keysa: "So it's not apples to apples instead perhaps oranges to grapefruits."

Joseph Maciejewski: "The percentages are still going to be as a ratio the same."

David McNamara: "I am looking at Exhibit I of today's submission, specifically under the Column 1- 4. There is a line item there: effective non-enforceable liens for \$410,000. That I take it is a result of some pulling of liens from the pool excluding them from the sale?"

James Tuppen: "In particular, one particular lien or maybe a set of liens, definitely from Erie 1, that was sold through PPTS Xspand relative to a particular property in the Town of Clarence. Those liens ought not to have been sold to Xspand and are being returned to Erie County as defective. When I say they ought not to have been sold because they were defective, I was specifically involved in that matter. The property had gone through bankruptcy, there was a new owner and a deal had been struck. This was in 1999 when the new owner was given five years to pay of all the delinquencies at 12% interest. The last year of delinquency was 1989 and that was the first year that the interest rate went to 18% from 12%. It used to be 12%; legislation got passed that changed it to 18%. The attorney who negotiated that agreement on behalf of the new owner was aware that the new legislation was coming and as part of a stipulation agreed to keep it at 12% and that was the deal that was struck. The County was not aware of that deal and should not have sold that lien to PPTS Xspand, they were expecting to carry 18% all the way; we had to take it back."

David McNamara: "If you are excluding that from the pool, why wouldn't that be taken out of the top line rather than taken out after the percentage is applied. If you take it out of the top line the percentage would be reduced."

James Tuppen: "No, try to understand, first of all, the top line is all shaded in grey. Those come directly from Xspand's proposal to Erie County and ETCC where they bid an aggregate amount of \$47 million, so we want to show you what their bid was and now we are reflecting adjustments that need to be made. The liens that PPTS is servicing and proposes to buy are those which are not defective and there is a process for Erie 1-4 whereby any defective liens have come up have been returned to Erie County; this is following the exact same process now. Let me add that it says "defective and

unenforceable.” I will enforce it. It is defective in terms of PPTS Xspand; money is owing to the County for real property taxes and we had stipulated to a 12% interest rate for that one year and I will recover that.”

- Director Keysa: “As exception accounting; because it doesn’t match the pattern for normal operations?”
- James Tuppen: “Exactly; it is not like all the other and that is why I say we have not have sold it.”
- David McNamara: “Is there going to be any other effort undertaken to identify defective non enforceable liens that will be called from the portfolio prior to closing?”
- James Tuppen: “Yes.”
- Joseph Maciejewski: “Well, if necessary and identified subject to the current terms and agreements set forth by Erie 1-4, then absolutely, and I believe we are there. That number would be an accurate reflection of what would be pulled out of there. The other part of that number, I think that Clarence property is something on the area of \$320,000, the remaining number out of that \$410,000 is has to do with proprieties which have been put for foreclosure by the City of Buffalo where the County liens have been wiped out through the City foreclosure and no proceeds were generated.
- Director Keysa: “My question is, are you still in a situation where competition with the City in its own foreclosures sales?”
- James Tuppen: “Well I try not to view it as a competition but one thing is very clear...”
- Director Keysa: “The reality is that it depends on who goes to foreclosure first?”
- James Tuppen: “It is not on a par. You have to understand that a tax lien has a reverse order of priority and that means, for example, a 2007 lien that goes uncollected all this year has priority over the 2006 tax certificate that we now own, it even has priority over all of the tax certificates we service presently by Xspand. The consequence of that is, if the property affected by a whole string of those certificates is in foreclosure because the older one, the County gets paid first. Now *vis-à-vis* the City of Buffalo the same rules apply. In terms reverse order of incidents; you have to look at the calendar and say my lien date id this date when is the sale and it goes back and forth back and forth item for item in theory for the proceeds of the sale.
- Director Keysa: “In essence, we discussed the fact that the County took on the role of guaranteeing the present abilities that was essentially to avoid that competition.”
- James Tuppen: “You may be right, the village guarantee is a late comer as you know and the towns and school districts have been guaranteed. As far as I can tell the Town of Amherst is the County of Erie’s.”
- Director Keysa: “The villages being added in the late seventies.”
- James Tuppen: “That was a legislative decision locally that was authorized by state approval.”
- Joseph Maciejewski: “Stan, if I could wrap up your question on what we are doing with the Association of Town Governments, Budget Director James Hartman and I are speaking at their meeting next Thursday to discuss the details of the deal a little better. Again, I have some disappointment with the Village of Angola coming here without any notice to us; we are committed to working with them with any of their properties.”
- David McNamara: “Looking at the purchase and sale agreement, Section 2.01 where the price belongs if you were preparing this contract for an April 30, 2007 closing what is that figure you would put in there.”
- James Tuppen: “The figure we would put in there and this is a projection of today is \$36,380,766.12.”
- David McNamara: “Which is the number on the far right under grand total?”
- James Tuppen: “...this appears on the second exhibit, along with the four asterisks which tells you the final net settlement amount and average estimates that shall form the final basis. This will be the insertion in Section 2.01 in the purchase and sale agreement.”
- Director Kruly: “Why wouldn’t you put the percentage in the document?”
- James Tuppen: “I stopped talking percentages a long time ago, I’m talking dollars. I am a tax collector not a percentages collector.”
- Director Kruly: “Then you would be the only one who stopped using percentages to the media.”

James Tuppen: "I try not to cover the newspapers that much either. When the facts came in 105% of the 2006 tax certificates that was exactly \$16,833,745.29, 105% is that number of dollars at the time the bid was made. Likewise the 84.2% equated to some \$31Million put the two together you get the \$47Million figure."

Director Kruly: "Why deal with two different figures?"

David McNamara: "There is also reference in the agreement to a tax lien schedule; has that schedule been prepared? There is mention of a disk, is that the schedule that has all of the information that is referred to in the definition of the tax lien schedule?"

James Tuppen: "I believe it does; it is where you will find some 37,000 liens Erie 1-4 and 2006."

Joseph Maciejewski: "And all 12,870 liens in 2006. If you are requesting that we will provide it by tomorrow."

Chairman Baynes: "We would like to look at the disk."

James Tuppen: "I would request that we remove the names of property owners please."

David McNamara: "I really wasn't getting into the request for the disk; I just had another question about the information that is requested on the disk and that is with respect to item E in the definition of tax line schedule. It says that that schedule, state on page four, that that tax line schedule contains the portion of the purchase price allocated to each lien. So will that information be included on the disk that has the list of thousands of liens."

James Tuppen: "Would you be kind enough to direct me to the item you are discussing?"

David McNamara: "The Purchase and Sale Agreement, definition of tax lien schedule."

James Tuppen: "Page eight you said"

David McNamara: "Item eight on page four."

James Tuppen: "That particular term is a defining term in the contract. It is to be derived from the TFC's schedule or part of the RFP (1:34) now whether a portion of the purchase price is presently allocated in what we issued with the RFP; I tend to doubt it because the bids weren't in."

David McNamara: "Is that something that needs to be done in advance of the closing?"

James Tuppen: "What will happen is apparently, the closing document that Director Kruly asked about recently will include a very big document identifying all of the liens that are being transferred in the sale and I believe that is the tax lien schedule that will ultimately be transferred from Erie and ETTC to PPTS and a version of it will be filed in the clerks office."

David McNamara: "Right, but does that do anything other than identify the liens that are being sold?"

James Tuppen: "Well it gives the amount, of course, and gives the years in question and identifies the property affected by the lien which is essential; I believe it identifies owners, mailing name and address, etc. so that they can be identified by municipality and location."

David McNamara: "Right, my question again is does it include an allocation of the purchase price of each lien because isn't that relative to the repurchase rights under the agreement going forward?"

James Tuppen: "Not specific to the repurchase right that we talked about in the case of abandoned or unutilized property; those are very specific. We pay full value plus 9% plus accrued costs. That you are talking about here, I probably don't understand it very well myself, is what the industry uses to value the receivable affecting a piece of property."

"We are not selling lien by lien by lien. There are companies that do that and then you get an allocation of that. This is still a bulk transaction where we look at the bottom line number and then look at the percentage rates that we are getting on that as a total pool. We have never collected 105%; seeing that number was the bottom line figure that sold me."

Director Keysa: "A little bit different issue here. Mr. Kruly and I were discussing yesterday the concern that the City of Buffalo has had with flipping and that the question we have here is what protections are in here that we will not see, for example, in the purchase and sale of these properties to have any flipping process take place?"

James Tuppen: "We have thought very long and hard and come up with some creativity to avoid that problem that was presented to us by the Anti Flipping Task Force which sees certain abuses going on, often nearby without people knowing what they are doing, properties being abandoned as a result of not knowing who the owner is and properties just flipping the properties. I don't disagree that it is a problem and I don't see it as my job to solve that fully. I will explain it is not up to me to say who can buy and sell property; please you don't have to pass a test. What we have done however, and this ties directly in with the ability of the Housing Corporation, is to go after an owner on record who is in violation. We have inserted a provision in the contract whereby if PPTS sells a property at foreclosure they will require the buyer to set forth his name and address on the line that gets recorded in the Clerk's Office. Therefore, anybody, including the Housing Corporation, can find them; it is not going to be on internet necessarily, but what I am getting at is that flipping process in essence has to do with not being able to find someone who is accountable. The best that we can do is make sure the name and address of the owner is on record. That is the best that we can do. We don't purport to tell PPTS who they can sell to or what they have to disclose, there are rules governing that. Don't get me wrong but by having sold the lien we have a few strings attached. It is a sale. We have asked that when you do sell, and they have agreed, that the deed will be recorded, name and address of owner and I cannot do anything better for the Housing Corporation if they are trying to track someone down for enforcement purposes. That is our solution to the problem as I can see."

Director Keysa: "Let me ask another question here, now that I can fully see your thinking with the split between the earlier properties and the 2006 properties. In reality, the new cash that would be coming into the County is really \$15 million not the nearly \$40 million?"

James Tuppen: "I am sure the Budget Director can speak better to that, but it is stated very clearly under the old transaction Erie 1-4 that Erie County presently has a very significant residual interest which we are selling off. So we having something and we are selling it for something; that is probably a wash with that regard. The idea of the transaction is that we give title to the buyer and so we have to undo all of the traffic with regard to the custodian and the trust and the residual interest that currently exists."

Director Keysa: "Has there been a designation as to where those funds would go?"

James Tuppen: "In terms of has the County Legislature has determined how the want to spend it, no sir. It might be better if the Budget Director speaks to that."

Budget Director Hartman: "Good morning. We are really on Exhibit IV now. I think from a Budget Director's stand point we are getting a financial result that we could not possibly achieve ourselves. So let's look at the numbers here because there is two key pieces to this one time infusion of cash that we are going to receive immediately after this transaction. Then there is the money in effect going forward if we continue this program in future years. So on Exhibit IV here and the numbers really flow, Exhibit I which is the financial settlement, again it is an estimate; the number may change at the time of close but we will essentially receive \$37.8 million in cash. Now in the future years of the four year plan, to answer your question Stan, we did have an assumption that we would have residual revenue from Erie 1-4 of about \$3.9 million a year. So the first thing we need to do here in that top bullet point is make sure that out of these proceed we replace that anticipated income. I propose we do that through legislative appropriation and create a debt service reserve fund into which we would put \$11.7 million so we would in a sense protect ourselves against the loss of that residual income."

Director Keysa: "That has not been done yet?"

Budget Director Hartman: "No, we wouldn't do it until the sale is done and everything I am about to describe here under use of net proceeds would require legislative approval including the bullet point which would be the creation of this debt service reserve. Then there would be remaining \$26 million which it would be our intention we would create unanticipated 2007 revenue and would create in the 2007 budget a contingency fund and it would not be our intention to spend that money. We do not need it to close the budget gap because we do not really have a budget gap."

Chairman Baynes: "Why don't you just put it in reserve?"

Budget Director Hartman: "Well because at the end of the year, from an accounting standpoint, the Comptroller could speak to this, it would be contingent to begin at the end of the year and would go to a reserve fund."

Chairman Baynes: "So you are committing right now that you are not going to spent the money that is being put into reserve; the whole \$36 million?"

Budget Director Hartman: "Well yes, it would go to debt service reserve and to this contingency fund yes."

Chairman Baynes: "The whole thing?"

Budget Director Hartman: "Correct. I will say that it will be there for any unanticipated debt in 2007, however it is not my intention to spend it."

Chairman Baynes: "At this time you believe you have extra money this year?"

Budget Director Hartman: "Extra money? No but I believe our budget is balanced. So we do not need this \$26 million to balance the budget."

Chairman Baynes: "So basically \$36 million will go into reserve at the end of the year?"

Budget Director Hartman: "No, \$11.7 million would go into to debt service reserve fund."

Chairman Baynes: "Than at the end of the year the \$26 million would go into debt service?"

Budget Director Hartman: "The \$26 million would go to what is our critical goal of restoring our fund balance. To me, that is the sort of major advantage of this transaction as opposed to on Erie's 1-4 waiting however many years on trying to collect that residual income. We are getting the money up front and we would have a million and a half of interest income.

Chairman Baynes: "I am very happy that you are getting the money up front. My only question is and again, Mr. Poloncarz and Mr. Giambra and yourselves are all on record saying that it is 105%, and I am looking at this today and two-thirds of it is 84% and one third is 105%. If you divide that and calculate it, it is around 90% which is a long way from 105%. So if you're selling it at 105% could you put the 105% in the contract because it does not appear anywhere. I have a 14 page contract and I don't see 105% anywhere, Mr. Hartman."

Budget Director Hartman: "Well Chairman Baynes, I think that was answered previously."

Chairman Baynes: "In fact, I am looking at a letter from Xspand dated January 5th and they even indicated that this not 105%. They indicate that it is 90.19% so you, Mr. Hartman keep telling the public it is 105%. Xspand has stated in a letter to Mr. Gach, who is Mr. Poloncarz's Deputy Comptroller, that is it 90%. So just answer me, where is the 105%? Just explain where the total 105% is and I will go away. We are here again for the taxpayers!"

Budget Director Hartman: "There are two pieces to the transaction which again go back to Exhibit I. I don't know what numbers came out of the newspaper, I don't control that. The RFP was clear. The response to the RFP was clear and that documentation was all provided to you previously. The return on Erie 1-4 is what is indicated and is a lower amount because that is a lien pool that has already been worked and for 2006 and going forward it would be 105%. I certainly don't think the numbers say anything differently."

"Then going forward in future years, again on Exhibit IV, in our current four year plan, we have an assumption that we would be doing these tax liens sales similarly to the previous residual interest model and we sort of assume the 78% similar to Erie's 1-4. If we now move to the 105% model it would mean that our estimate there would be over \$4 million of additional money beginning in 2007 and going forward. So there is not only the one time value of building reserve funds there is a future revenue gain. From the stand point of our credit rating I see this as a value because what we are doing is essentially guaranteeing a result certain and taking collection risk out of the budget process."

"The final point is, what happens if you don't approve this contract and we don't do this sale? It would be, and you should be familiar with the number, it is difficult to estimate but we think that there would be about a \$3.5 million hole in the 2007 in the budget because Xspand would now be out of the picture and we would back in it and its hard to know exactly what that member would be but we are thing about \$3.5 million and that was in fact the number that you used in your resolution declaring a hard control board when you decided that there would be a \$15 million hole in the budget. You had in fact assumed that here would not be a tax lien sale and so therefore we are just going to set on that number if in fact the contract is not approved it would create a hole in the 2007 Budget."

Chairman Baynes: "Mr. Hartman, this may be the greatest deal on the planet. I am just confused with the numbers. I keep seeing 105% in the newspaper, I keep hearing on TV reports coming out the Comptroller office and your office; I just assumed it was 105% and now when I see a letter from Xspand saying 90%, we have to question it, don't you think so?"

Budget Director Hartman: "Yes, again I think all of the documents we have provided you are pretty clear as to what the numbers are."

Chairman Baynes: "I am clearly looking at a document that states that the numbers are closer to 90%; so that's why we are questioning it."

Budget Director Hartman: "I'm not sure what document you are looking at but I do know what the RFP response was."

Chairman Baynes: "Again I hope it is the greatest deal in the world; we are here to help the community."

Director Kee: "I just want verification, if these liens were not approved, could you verify the financial effect of that"

Budget Director Hartman: "Well we would not have \$14 million."

Director Kee: "Right, Okay."

Budget Director Hartman: "...and depending on 2007, because we didn't do a deal in 2006, so we are rolling into it and that would be the impact I indicated in 2007."

Director Keysa: "Mr. Maciejewski, I want to go back to the issue that we discussed earlier and perhaps Budget Director Hartman can help out here. I am a little concerned about the bid process here. I am told, for example, that there is no provision in there for a non-collusion certificate which should be in there and that there are only two bidders on this \$40 million process; \$40 million in assets that we are selling. I also saw a provision in there that Xspand has a right of first refusal to do the same type of purchase on the same terms for the next four years."

Budget Director Hartman: "That is correct and that is something I will let Mr. Tuppen answer."

Director Keysa: "Mr. Tuppen, why do you not have a non-collusive bidding provision in there? This is a sale and not a purchase. That would be something that is essential to giving people some faith in the process; is this a clean process?"

James Tuppen: "Relative to a non-collusion certificate, we employed an RFP process and we timely received two written proposals from two tax lien entities in the tax lien industry. One of them was PPTS Xspand Bear Stearns and the other was American Tax Holder. I have no information that there was any collusion between them."

Director Keysa: "I'm not suggesting that there was collusion..."

James Tuppen: "I believe you are suggesting that!"

Director Keysa: "No I'm not; but this is a standard municipal process and every contract that I have seen has a non-collusion provision that simply states that bidders have not colluded with any other bidder in fixing the price in the bidding process."

Chairman Baynes: "It should be noted that Director Keysa is also an attorney, so what he is saying here is relevant."

Director Keysa: "I am not suggesting that there is collusion here I just don't know why that item was not in the bidding process?"

James Tuppen: "I recognize that bids under that General Municipal Law do require that certificate. This was not a bid under that law. This body itself uses RFP's and I don't really know one way or another if you need a non-collusion agreement when you use RFP's."

Director Keysa: "I would have to ask our counsel on that because I have not looked at the details of the RFP process."

Chairman Baynes: "How was the RFP advertised?"

James Tuppen: "It was directly sent to the two leaders in the industry."

Chairman Baynes: "So that's why there were only two bidders then?"

James Tuppen: "I guess so, yes."

Chairman Baynes: "Earlier that was a statement made that there are several companies in this industry that service tax liens; why would it only go to two people?"

James Tuppen: "I can tell you anecdotally if you will accept it, they are very competitive and they were vying seriously for the purchase."

Director Keysa: "But if there were two bidders that were specifically vying for the bid and I have no problem if it was an open process but any corporation that was interested should have been able to bid and that wasn't the situation. Again we are allowing them to have the same contract for three or four years."

James Tuppen: "Actually the terms are 110% for three years."

Chairman Baynes: "What was the price difference between the two companies?"

James Tuppen: "I don't have that exact figure."

Chairman Baynes: "There was a difference of \$8 million on a \$41 million deal. If it was that far apart, wouldn't you think of bringing in a third or fourth bidder? I mean that is a big difference, your talking about 20% difference. They are very competitive, your attorney just said, and they are 20% off."

Joseph Maciejewski: "That was a quote."

James Tuppen: "They were vying for the sale."

Chairman Baynes: "They don't seem too competitive with 20% off."

James Tuppen: "Well, I was not pleased with the amount that they bid."

Joseph Maciejewski: "To that effect, there were only two proposals sent to Xspan and to ATF."

Chairman Baynes: "Let me just interrupt you for just a second. You started out making it seem like this big RFP is out there and now it comes out that you have sent out to two people to bid on it. So there really was not an RFP, you sent out two letters to two different companies."

Joseph Maciejewski: "They were requests for proposals."

Chairman Baynes: "Yes, but there are several companies that are doing this all around the country now and you sent it to two."

Joseph Maciejewski: "There are not several companies; we could only find two companies that were doing this."

Director Keysa: "The City of Syracuse sent it out to at least five different companies when they were doing the same thing: Municipal Bond Bank Agency, JER Mortgaging services, American Task services, Xspan and Bank Atlanta. You couldn't find those other ones?"

Joseph Maciejewski: "We had dealings with JER and MBBA and we did not want to go into the same trap that the City of Buffalo went into with JER or the MBBA."

Director Keysa: "But you wouldn't ask them for proposals to see what they would come back with?"

Joseph Maciejewski: "Again we did not want to solicit a proposal from Municipal Bond Bank Agency. Everybody who has liens owned by the MBBA is now going to companies like Xspan and ATF to get out of those deals."

Chairman Baynes: "Can I ask you a question, how much is Xspan old deal worth? How much are they paying us percentage wise on the dollar, is it \$1.05 on the old deal?"

Joseph Maciejewski: "Not with the advance and residual; we would hope to get 100%."

Chairman Baynes: "So they were going to pay you 100% and they increased it by 5%? What was the contract rice in the old deal?"

Joseph Maciejewski: "It was an advance rate. John Garzone would you answer that?"

John Garzone: "My name is John Garzone, President of Xspan."

Chairman Baynes: "For the record my brother in law works at Bear Stearns. I want to be clear that it doesn't say Bear Stearns Xspan anywhere. He says it is just Xspan and I went on your website and Bear Stearns doesn't appear anywhere."

John Garzone: "Xspan is a wholly owned subsidiary of Bear Stearns."

Chairman Baynes: "But it is not Bear Stearns Xspan."

John Garzone: "That is correct."

Chairman Baynes: "Thank you."

John Garzone: "The old transaction provided for an advanced rate or a note amount to be recovered over a specific period of years. In this case, depending on the deal it is three of four years. That money we advance be it 70 or 80% was determined by the amount that we would expect to recover over that three or four year period. Subsequent to those collections or once the original note had been repaid additional monies that came in would revert to the County by way of the residual. So it is really an apples and oranges comparison when you are trying to say "what was the original advance rate on the first transaction?"

Chairman Baynes: "I understand the original advance rate may have been set May 9th but you may have made them whole on 100%."

John: "That is correct money comes in over a period of time."

Chairman Baynes: "Does anyone have any questions for Mr. Garzone?"

Director Kruly: "The proposal that you have submitted us on the ETCC portion of the deal and the Erie portion of the deal, they both are broken down principal to interest. The Erie 2006 deal has a principal of \$12,101,000 which Mr. Maciejewski say the numbers were as of December 31, 2006. That is correct?"

John Garzone: "Yes."

Director Kruly: "The interest on \$3.5 million turns out to be almost exactly 25%. How did you arrive at that number?"

John Garzone: "That is the amount of interest that is on the lien that the County provided."

Director Kruly: "It is all the interest that you anticipate the lien is earning."

John Garzone: "No, no, no that is the amount that was available on the file to date as of December 31."

Director Kruly: "What about going forward."

John Garzone: "Going forward it depends on the life of the lien. This is not a net present value sir, this is of the value that the County was holding at that time; what were we willing to pay for that value."

Director Kruly: "What you are willing to get is the collections and the interest in penalties and going forward that means considerably more than 25% on many of the liens. What I am concerned about is that folks in the Rath Building, Mr. Tuppen says that he does not work in percentages anymore, many people are still talking about 105%. The 105% is based on a number that is very fluid because the interest that comes to Xspan will probably be considerably higher than \$3 million. For example, just pulling a number out of the air 50% of the principle then the rate of return is not 105% it is about 87% or 88% and I think we are getting some misleading information here because you have chosen to use 25% as a benchmark. The County Legislature and others has accepted that as set forth in your proposal and we have a number that is fluid; there is an inaccurate number."

John Garzone: "I am sorry but I have to respond to the analysis. I think you are misunderstanding the nature of the analysis and the nature of what this represents. The County presented us with a file of their asset value, \$12 million of lien value and \$3 million of accumulated interest. In our process we go out and visit every property on that list; all 12,000 proprieties reflected in that file. We look at the properties and come up with evaluation and we know that within that value there will losses and liens that pay. Some liens will pay the next day, some will pay within the year and some will take years to collect we take that valuation of the asset and the interest amount that we are paying, that \$3 million non-earning asset, it has already been accrued. The taxpayer does not pay interest on that interest. So we look at the amount of money we pay and estimate what our losses will be and we develop a price that we are willing to pay with an expected redemption pattern of those liens. Again some will pay very quickly and earn 1% and some will pay slowly and accrue a larger amount of money but it is not a multiple of the \$3 million."

Director Kruly: "I alluded earlier to a contract that had nothing to do with you folks, it was an engineering contract for a school district. It is very specific data and contains day to day work detail and also includes information on the property value? Could you tell me how Xspan would report this?"

John Garzone: "That is something that we would not disclose."

Director Kruly: "You can't or won't?"

John Garzone: "We don't. We are buying an asset and making an investment. What we make is the difference in our cost of funds, however we raise money in the short or long term markets and the effective interest rate that is earned on the liens that are outstanding while they are outstanding minus any of the losses that we have on the portfolio, the true extent of the losses and we will not know until the end."

Director Kruly: "I have some procedural questions. There was a discussion earlier about forbearance issue and dealing with individual taxpayers who have issues. Do you have a problem putting that into a contract?"

John Garzone: "That is not something strengths quite frankly. We are a major multinational firm and, with all do respect to the citizens of the County, we are not interested in being property owners of the County. This is a financial transaction. Our goal is not only to do a financial transaction but to be a partner with the County as a firm and to get the delinquent tax payer back on the tax roles. So the payment plan, I wouldn't necessarily call it forbearance type of agreement is something that we value and use very often."

Director Kruly: "The City of Buffalo has some problems with its tax liens in backing out of it one way or another. Is there anyway that County can get out of a liens at some later date if it is not working out in some way or another?"

John Garzone: "I can't think a reason why they would but anything can be negotiated. I don't enter into an agreement with the understanding that someone is going to want to get out of it but I certainly can negotiate any transaction."

Director Kruly: "Now with reference to the Erie County Tax Act, the Act provides that interest changes start at 7.5% and work their way up to 18%. I looked at the New York City website, the package that New York City received on the portion of their liens and I just want to confirm that you are not doing here what you are doing there and that is to charge out at 18% of the bat compounded daily with 5% surcharge."

John Garzone: "The 18% daily that you mentioned daily is NYC statutory rate, we simply service for them in accordance with their statutory rate."

Director Kruly: "So you follow the Tax Act?"

John Garzone: "Absolutely, we do not add any interest or penalties or fees onto the tax liens. The only additional costs that are incurred are in the even that we have out of pocket legal fees or expense for foreclosure, if allowed by the guidelines, apparently in Eire County and one of the reasons why many properties sit around and are not foreclosed on, is that the legal fees are not reimbursable and the County is trying to take action to change the legislation in that regard but that would be the only out of pocket expense that we foresee. We do not charge additional fees, we cannot and do not add additional interest; we step in the shoes of the County."

Director Kruly: "One of the proposal recommendations it that appropriate information be provided to the appropriate County officials on the status of the liens; tax liens are pretty much public record. For example, I can go on a website for the Town of Amherst and you can look up property. In fact because you folks take care of it with the County so the county records are showing the taxes but you explain in your proposal that there are several hundred calls you get a month, if Joe Smith calls and wants to know the tax lien on 75 Troyville Lane in Williamsville are you in a position to get that to them?"

John Garzone: "If it is the taxpayer."

Director Kruly: "No, no; what if I am thinking about buying that property?"

John Garzone: "We have that information available to us but I would have to defer to counsel as to whether we are allowed to do that or not. I do not know the answer to that question."

Director Kruly: "The website that you have up regarding monthly payments; are all taxpayer treated the same? If I have a lien and Mr. McNamara has a lien do we get the same terms? Can I pay monthly? Does he have to pay yearly? How does that work?"

John Garzone: "I think every taxpayer is treated with the same level of respect and dignity. Typically people who get on payment plans like to pay monthly but it doesn't mean that someone can't pay quarterly or weekly but typically monthly payment plans are what people ask for."

Director Keysa: "Do the terms vary a lot?"

John Garzone: "Director Keysa, keep in mind that the only terms would be the periodic payment time frames. There is no additional interest rates or charges; it is whatever the County statutes are. Our job is to collect as soon as possible. That is what we try to do."

Director Kruly: "The question that I am asking is, is it written down in some kind of provision explaining how you will manage this system?"

John Garzone: "Our old servicing agreement with the ETCC would have detailed our servicing procedures. Our current proposal since we are not servicing for the County our current purchase and sale does not contain that."

Director Kruly: "None of these things that we have talked about are written down in the contract?"

John Garzone: "That is correct, this contract does not call for us to act as a servicer for the County; we are simply purchasing the asset. We are servicing for ourselves in that regard."

David McNamara: "You have been servicing agreements in place now with respect to the servicing you are doing for the ETCC. Those servicing agreements go away with the approval of this contract, is that correct?"

John Garzone: "That would be correct."

David McNamara: "But you are following certain practices under that agreement now, will those practices change the transaction with respect to how you are going to be servicing these tax liens from the taxpayers stand point."

John Garzone: "From that taxpayers standpoint, no. The only difference right now would be when we have a group of liens or a lien for foreclosure. We go to the ETCC Board, obviously that step would be eliminated now, but our servicing criteria and standards would be identical and in accordance with the Counties wishes."

David McNamara: "So if a taxpayer wants information?"

John Garzone: "At any given point in time, any day we can give the taxpayer a payoff statement if they want it."

David McNamara: "Is it s face to face transaction?"

John Garzone: "We can do it electronically; we have the capability to do online faxes as they call them."

David McNamara: "From where?"

John Garzone: "The operation center for this is in Morristown, New Jersey. Right now, the real estate office does have access to our site, that if a taxpayer comes in they can dial up our site and see the pay off amounts available."

David McNamara: "Your response to the RFP states that creative programs and processes have been implemented offering property owners traditional alternative methods and resources for lien redemptions. Are those creative programs written down somewhere? Are those procedures that are followed that you do one off basis depending on the circumstance of the taxpayer?"

John Garzone: "It is on a one-off basis, depending on the circumstances of the taxpayer. Things like periodic payment plans are worked out, assistance with refinancing if someone needed to do so. In the past we have done with other clients, we have not done this in Erie County, where we have brought in banks to do CR loans. It is in our best interest to remain as a partner with the County and to repeat a transaction, minimize any difficulty for the taxpayer and get them back on roll. I think we have been pretty successful."

Director Kee: "You mentioned that one of your objectives is to get delinquent tax payers to become taxpayers. I just wanted to take a look here at some of the techniques that your firm uses. Tell me what your top three most effective techniques are, utilized by your firm to get these taxpayer that are delinquent to become taxpayers again?"

John Garzone: "There are two key ones. For single family residential owners, the payment plan works. Different people have different reasons for not paying their taxes. Some people have life events, medial reasons, etc, that cause hardship and obviously we will work with those people as best as we can and with in the law to assure that they retain the value of their home and pay their taxes. In the commercial market, we have been successful in other jurisdictions in dealing with absentee landlords. We have been very successful with different skip tracing techniques and program. We have gotten into a number of rent situations were the tenants are now able to pay the rent back to the tax lien holder so that the landlord feels the pain. In many scenarios you have a landlord who is not worried about the property, it has deteriorated, drag as much rent out as they can and then moves to

the next property. Here, if they are not getting the cash flow they have to do something to act ant that has been a very successful technique in getting absentee landlords to step and pay there tax or consider alternatives.”

- Director Keysa: “What if there is no tenant on the property?”
- John Garzone: “Well again we are buying the lien, we are not taking possession of the property. The only thing that we can do is, when the time frame allows, I think the question was how do we get the current taxpayer to pay the lien, when the time frame allows, by whatever is the statutory period, we can then take that vacant property to foreclosure and attempt to foreclose the property to a compliant tax payer.”
- Director Keysa: “Do you have a reserve price on your foreclosures?”
- John Garzone: “There is a statute when you foreclose. In the County I believe you have to go through with, the first price has to be the taxes due and then there is a process. Obviously if we take possession of the property ourselves, we would go to ETCC and make a sale at whatever price works.”
- Director Kee: “Was there another technique you wanted to share?”
- John Garzone: “I think when you look at commercial and residential those are probably the two main areas to help get those people back up.”
- Director Johnson: “My question is to the gentleman at the podium, under your contract or your proposed contract, how many entities are involved in helping the County eradicate the condition that precipitate the delinquent taxes?”
- John Garzone: “I am not aware of any, we are working as a servicer for the ETCC for four year and we are not involved with any other organization.”
- Director Johnson: “So you have no involvement with any other organization; you are the direct contact.
- John Garzone: “That is correct.”
- Director Kruly: “When you do get to foreclosure, there is an organization in Buffalo called the Mayor’s Anti Flipping Task Force and they have suggested that the contract provide for that no internet foreclosure sales occur. Are you involved in any internet sales?”
- John Garzone: “We do not right now but we will advertise properties on an internet site but we will go to a full legal documentation sale and legal registration of the property if there is a sale but, many times, what we try to bring to many communities would be a developer or investors who are interested in trying to buy the properties. One of the ways we develop that interest is to see the properties on a website. It is a picture and description of the property but they would have to contact us and negotiate a transaction at that time. If and when there is a foreclosure then we now own the property.”
- Chairman Baynes: “I have one more question. I was looking at your website today and I believe on page one it says “we do business with the most sophisticated government entities in the US.” When I look at this, New York City has a control board, Nassau County has a control board, Erie County has a control board, you have counties in Ohio that are in trouble, Camden, New Jersey, the Los Angeles City school District is in trouble, I don’t see Phoenix, Palm Beach, Beverly Hills, etc. Do you only deal with distressed or troubled communities?”
- John Garzone: “Well no actually, the opposite. Certain jurisdictions sell differently. Palm Beach for example we invest probably \$20 million a year.”
- Chairman Baynes: “You invest \$20 million in Palm Beach and \$40 million in Erie County. Do you do their tax liens?”
- John Garzone: “We invest about that much? Palm Beach and the whole state of Florida operate differently and the way they operate is by conducting mandatory auction property by property. We purchase in those counties, Palm Beach and Dade and in major areas of Florida, we purchase liens in those areas but they by statute run an individual auction, same with Arizona. Arizona runs a lien by lien auction.”
- Chairman Baynes: “Do you do Suffolk County’s lien sale?”
- John Garzone: “Suffolk County to date has not sold liens. Not getting into marketing; we have certainly tied to visit with them, but they have there own time frame.”
- Chairman Baynes: “What about Westchester County?”

John Garzone: "I believe Westchester sells liens on an individual lien by lien basis."

Chairman Baynes: "Do they do wholesale like this; Westchester, Suffolk?"

John Garzone: "In New York State, there are certain communities that do bulk sale and certain that do lien by lien."

Chairman Baynes: "Does anyone have anymore questions? Thank you very much Mr. Garzone."

Director Kee: "Mr. Chair, I think that, having heard from a lot of folks today and I don't know who else is out there but I personally as a member feel that we need to do some more homework and come up with some other alternatives and look at some options that really need to be considered. I realize that the time table for doing that should be relatively short, do you agree with that?"

Chairman Baynes: "I concur, does anyone have any comments?"

Director Keysa: "I would agree with that and I would note that one of the questions here is, all of a sudden we have all of this money coming in and I look at what they are selling here, the adjusted figure and the interest that is to be paid on that over the next year assuming it takes a year to sell it and they all sold at the year and I realize the likelihood, but the 18% that would be earned on that amount next year is \$2.5 million. If we instituted the County's process, it would be about \$500,000. The County is walking away from at least \$2 million; it is a significant amount of money in order to go through this process. I am very concerned with the bidding process. Only two companies were solicited and there are other companies out there that were not solicited and the solicitation that takes place does not have a non-collusion certificate in there. They do not have to sign a letter, yet we sell used pick up trucks at open bid in an auction and they are not doing the same thing with a \$40 million tax lien sale. It stinks."

Chairman Baynes: "Do Mr. Giambra or Mr. Comptroller Poloncarz care to speak?"

Comptroller Poloncarz: "You will have to forgive me but I am not feeling well. You have asked me to appear and I will speak but I will first off, I would like to note that you have put words in my mouth that I did not state, Mr. Chairman. I did note in the past that this proposal for 105% was for the 2006 tax liens and I did note for the record that there was a lower amount for the roll up in the prior years. Unfortunately we have not spoken on this personally even though I have reached out to you and if we had, I would have told you that."

Chairman Baynes: "I think we did speak and I think you told me that interest rates were heading down. We should look at that later, but go ahead Mr. Comptroller Poloncarz."

Comptroller Poloncarz: "Getting back to why I was originally involved in this transaction is basically, because of the ETCC, I sit on it as a Director. I don't sit on it personally as a Director; I did on it in my role as Erie County Comptroller. If I was not the Comptroller tomorrow, I would not sit on as a Director. As a Director, I sat in meeting in which proposals were set forth to continue the prior tax lien sale what would be similar but slightly adjusted financial terms. I objected to those term, I didn't think that they were correct. One thing we were talking about was an advance funding rate of around 70%, 75% to 78% but one of the things that hasn't really been spoken about is a note that gets paid off at the same time that Xspan received which was millions of dollars. I did not think that we should be giving \$0.00 on the \$1.00 and be paying a note in the short term. In the long term receiving hopefully up to the whole value of the liens but not necessarily ensuring that we would but in the mean time paying a note that was almost 10% which was the proposal, which if I am correct in my memory the proposal was for a note at 2.4% at that time would have been close to 9.5% and is now closer to 10% interest and I did not think that was a level that we should be paying at."

Chairman Baynes: "So the County is paying interest?"

Comptroller Poloncarz: "No, we did not go forward with that proposal; I objected to it and stated that I would not go forward with it. At the time a decision was made by the Directors including the Independent Directors and I recall Mr. Smith saying he said that he was not in favor of that transaction lets see if we can do this a different way. My office noted that we think here were better ways to do that and that is why we issued an RFP. Now I was not involved in the RFP process to some of the questions Mr. Director Keysa has, I can not answer as to what was included in the RFO or not but an RFP was issued to what I understand are the two main industries in the business. They did not send to the MMB. I see that Ms. Lynch is here from the Anti Flipping Task Force; we have met before and spoke on this issue and am fairly confident that she would not have wanted the County to send it to the Municipal Bond Bank because of the experience that not only City of Buffalo has be but the experience of all municipalities throughout New York State but they were sent to the two major entities. The result that came back were much better financially, first off there was no note which is as been portrayed today a true sale and one of the reasons why there may be smaller documentation than in other ones is because sometimes in a true sale you just want to get down to the business of what the sale is; what are the items that you are selling and what is the purchase price. I know as an attorney, I know

that I am the Comptroller, but I did practice as an attorney in the private sector for many years, I was always one who did not want to paper a deal to death but to get down to the basic terms of what a transaction is. There are two basic agreements; one which is in direct reference to what would be ETCC liens and those which are related to the 2006 deal which are presently owned by the County. Looking at proposals that came in from American Tax Funding as well as from Xspand, I was of the opinion, like others that Xspand was a better deal a better transaction of the two for the County. I looked at it from both the comparable numbers in the sale of ETCC properties as well as the sale of the 2006 tax liens. I do note, that I have said many times that the sale of the liens selling up to 105% of the 2006 tax liens is compared to what Erie County in the past and I think what has been documented and which my office has concurred on is the reception rate or the final rate or amount received in the past years. Mr. Gach, my Deputy County Comptroller, I know was working at the Budget office with Director Kruly and Director Kee at the same time some of these transactions were going on and we note that at no time did the uncollected amount as the of the tax sale date ever reach 100% even with 18% interest that you can collect on it. I have dealt with a lot of personal things in the private sector; actually I am probably the only person here who has experienced a dealing with Xspand from the debtor side because in years past I actually represented a commercial entity that dealt with Xspand when they had tax liens that they needed to pay and I will note that we were able to negotiate a month to month settlement in which that party eventually paid their tax lien in what I think was an 18 month period and got back into financial shape and didn't have to file bankruptcy. I note that for the record because the one thing, well we have to look at the two transactions separately because they are different. One is a roll up of the prior amount and one is a sale of the existing amounts but even in years past at no time did the county receive 105% or even 100% of then due amount of the tax line sale. I have done a lot of business in the past and my mother always told me that whatever you multiple by zero is still zero and you can multiple 18% by whatever you want but in a lot of these deals that you are generating zero dollars on 18% of zero is still zero. I think it is evident from the amount of recovered taxes that have been shown in Erie County history the past it is not to say that all liens are uncollectible because some of them are but some of them aren't and we have to understand that just because there are \$30 million in tax liens or \$15 million doesn't mean you are going to generate \$30 or \$15 million in tax liens. Some of those are going to generate zero and unfortunately it goes to the foreclosure process whether the County does it or Xspand does it or another entity sells it, there are some properties that are just not going to sell. I understand that there are provisions in this contract that protect the County, unlike the City's deal where we can go after properties that are hurting neighborhoods. I live in the City of Buffalo, so I do not want to see further plight in the City of Buffalo but there is a provision here that allows the County to come back in and repurchase the liens to that we can use that property for productive use and that is a good provision that was added in by the Legislature and my office concurred and I don't think that Stan had any issues with that originally. It wasn't in the original key terms but when the discussion was brought forth it was added. I see Mr. Garzone nodding his head in affirmative action and I think that they agreed that this was fine with them."

"It is a good deal for the citizens of Erie County, financially and for our community because it one, ensures financial status of the County, it give my office the opportunity and I will go through a little bit on why I think it is beneficial for my office to use this money, it restores the fund balance but it also helps some of these communities that have plighted areas that we don't leave these communities like the City of Buffalo has where properties are in tax lien limbo held by the Municipal Bond Bank that is doing nothing. Nobody can buy the property; nobody can do anything with the property. This deal prevents that from happening. It is the reengineering of government which this Board has asked for since its existence which is two years now. It allows the County to sell an asset and get more money than we would receive in 2006 tax liens than we could obtain on our own by ourselves by going through the privates sector."

Chairman Baynes: Mr. Poloncarz, I agree with you on reengineering and that is something that we are a huge proponent of it. You also told me you were an attorney earlier. I am looking at the Purchase and Sale agreement between Plymouth and Erie County on page 5 they don't have a purchase price, I buy a lot of property around the County for my business, and I have never purchased anything without a price. Usually the price is in there and then you negotiate the final price. Would you allow your client to sign this?"

Comptroller Poloncarz: "Let's put it this way, often the price is not added until the moment of the closing; I have negotiated \$100 million deals with multiple parties in which until you actually have a general agreements but the last thing you do is negotiate the assets and the true value of those assets and that is one of the reason why you had questioned why there was no percentage in here. The percentage is agrees upon by the negotiating parties, the final purchase price is dependent on the assets that are sold on the day of the sale and that is dependent on the amount that is agreed upon in the mean time. I have negotiated, and I am quite certain Mr. McNamara has negotiated transactions, where the final purchase price is not put in until the final moment."

Chairman Baynes: "I'm not even asking for the final purchase price, I am just asking for some price."

Comptroller Poloncarz: "There is none in the document, I agree."

Chairman Baynes: "Have you ever negotiated with just nothing?"

Comptroller Poloncarz: "Actually I have seen documents with the exact same thing. Ironically it is the exact same law firm that is located in Austin that is a large transaction a number of years ago. The issue is what is the amount in there the issue is what is number at the final transaction and everyone is in agreement that in general for the 2006 tax lien sale the percentage will be 105% of the then outstanding amount minus the deductions that are included on the document that has been provided today and I think that is under Exhibit I and that is going to fluctuate. Even if this amount is closed today, that number is as of April 16<sup>th</sup>, the amount has probably changed one or two dollars and as of the closing date of April 30<sup>th</sup> it will fluctuate and will be a little bit lower as well because of the additional amounts that have accrued."

Chairman Baynes: "So don't you think it is fair to but 105% in there somewhere; I mean everyone is bantering 105%, can't that be in there somewhere? In six months there is going to be a new County Executive and he is going to say: "Chairman Baynes why did you let your control board sign this if there is a problem?" He goes to the Attorney General, to the State Comptroller and he says "there was no price in there - how could you sign this?""

Comptroller Poloncarz: "I think there will be a price in there at the time of the execution."

Chairman Baynes: "Well they want us to approve this today, would you approve this today?"

Comptroller Poloncarz: "Well let me note for the record that this board has approved contracts without contracts without true final dollar figures because last year when they did the borrowing the only thing we had was a preliminary offering statement."

Chairman Baynes: "But we had numbers."

Comptroller Poloncarz: "You had tentative numbers?"

Chairman Baynes: "Right we had tentative numbers, but here we have none."

Comptroller Poloncarz: "These are tentative numbers. You had tentative numbers and truthfully in some of the areas of the offering statement that were blank and Mr. Executive Director Vetter can attest to that because he did review the preliminary offering statement. There are other documents that his Board did not approve but gave the right to enter into approval which are standard in the industry of doing bond and borrowing transactions. I'm not the County Attorney; I am here as the Comptroller and I would be glad to talk about the reasons why this is appropriate."

Chairman Baynes: I want this deal to work but should I sign this contract today without numbers?"

Comptroller Poloncarz: "I don't believe you are signing the contract, you are approving a draft."

Chairman Baynes: Would you approve this without a number in there?"

Comptroller Poloncarz: "If they wanted to put a number in there I guess they could put a hard number in there but the dollar amount would change at the date of closing."

Chairman Baynes: "Could we put 105% in there at least?"

Comptroller Poloncarz: "I am not the one who can make that decision. You would have to talk to the County Attorney."

Chairman Baynes: "Do you agree to the 105%"

Comptroller Poloncarz: "On the 2006 tax liens it is my understanding that we would receive 105%."

Chairman Baynes: "And so you agreed to 105%, why don't you put the number in. You are the Comptroller; why don't you ask them to put it in? You sit on both Boards"

Comptroller Poloncarz: "I have no objection to the general position that you have other than the fact than I truthfully would rather have a hard dollar figure that will be based on numbers at the date of the closing rather than a percentage because then you may have two contradictory amounts. The hard dollar figure is going to be based on the percentage of 105% for the 2006 tax lien sale. The hard dollar number on the ETCC to Xspand will be based on the 82.4% number. I understand your issue, I am not the County Attorney, and I did not negotiate this contract. It is not in my purview as the County Comptroller. What I look at is the number and the affect it is going to have on the County. Mr. Hartman talked about the restoration of fund balance and I believe that is a key operation of this deal and allows for the restoration of the fund balance of approximately \$24-26 million depending on what the final number is. If it is put into this reserve fund, I have said to the Administration that I do not want you

spending this money; if you spend it I will heavily criticize you. You have a good plan to put it into the prepayment of debt serve, you have a good plan to allow for the restoration of the fund balance, and I think everyone on this Board will agree that one of the key items to restore the Counties bond rating is the restoration of the fund balance. This will get us up to the 5% threshold which is the general standard of the New York state fund balance of having approximately \$50 million after we have finished doing the examination for the 2006 fiscal year which is the auditing of the financial statements going on right now. Let's assume that that money will not be touched and I will not allow it to be touched, \$36 million dollars invest at an interest rate of 5.3% nets about \$1.9 million in interest income. We are actually getting above that right now in interest rates. \$36 million invested at 5%, a lower amount, still nets \$1.8 million in interest income which is one of the questions you thought that the County was leaving on the table. By receiving this money as of the date of the closing we would still have the opportunity to generate almost \$2 million in interest income just in this year alone. One it roles over the net balance in future years we net additional interest on that. This also helps the County in its cash flow and I am hopeful that if this deal is closed by the end of this month as was the original plan, it will reduce the amount of money that we propose to borrow in our Ran. In 2005, the County borrowed \$160 million through toe Revenue Anticipation Notes (RAN) of \$80,000 a piece. Last year we were able to reduce that to \$110 million. The proposal right now is to have a RAN of approximately \$98.5 million. We have not sent out the RFP's for that yet, it all depends on what happens with this transaction. My office does not negotiate with one party. We issue RFP's to the public. Last year if you remember we got a fantastic rate from Bank of America. It has no credit enhancement charges, really not fees, they basically for a sheet of a couple papers, and bond counsel gave us a great review."

- Director Keysa: "Do you think that that was the appropriate thing to do? and I commend your office for doing that, but are you comfortable with the fact that there were only two bids received? That they were solicited bids, that there are other companies out there that were not solicited and that the bids that were solicited were not required to sign a non-collusive certificate?"
- Comptroller Poloncarz: "On the collusion item, I am not the County Attorney."
- Director Keysa: "No, you're the fiscal watchdog."
- Comptroller Poloncarz: "If there are issues with collusion I have problems with collusion and I think in the final closing, I may not be the County Attorney, but I think that we can obtain statements from Xspand as to whether there were issues of collusion."
- Director Keysa: "Mr. Garzone, can you commit on behalf of Xspand the fact that there was no collusion whatsoever with the other bidder, and you will sign a letter to that effect? Mr. James Tuppen, will you request that letter and get that before the day is out?"
- John Garzone: "The question was whether we would agree to comply with or sign a non-collusive document and the answer is absolutely yes. This is not an issue."
- Director Keysa: "So you are assuring us today that there was no collusion in your bidding with the competitor on this?"
- John Garzone: "Absolutely, and I do want to offer one other point there was a reference to the Syracuse item and had some names on them. Some of the entities do not purchase tax liens, they may be involved in servicing but they are not active investors in the tax line industry."
- Director Keysa: "Thank you. But there are other companies beside yourself and ATF?"
- John Garzone: "I am sure there are some but not anyone larger."
- Joseph Maciejewski: "On behalf of the County, Chairman Baynes, I am willing to put that 105% for the 2006 contract that you have in front of you today with the figure in the shaded area on Exhibit I, as of 12/31/06. That that was the number agreed upon."
- Chairman Baynes: "What is the reason that the other one is 84.5% and not 105%?"
- Joseph Maciejewski: "As we stated before that is a roll up of Erie 1-4 that we are already owned by the ETCC that are now being out right sold. The 2006 tax liens are owned by Erie County."
- Chairman Baynes: "Do you understand why we have questions?"
- Joseph Maciejewski: "I can understand"
- Chairman Baynes: "I'm not trying to be a pain, don't get me wrong; if this thing works, I want to approve it."

John Garzone: "I just want to provide further information on those issues, Keep in mind that the older deals when they were first done they had liens that accumulated over a number of years. You have a situation there where the value of the recoverable amounts will be zero and other distressed proprietries, when you look at the 2006 liens which are more current, you get a much different picture than the accumulation will be over this."

Director Keysa: "Comptroller Poloncarz, if I might ask you, going forward we are told that this contract includes the right of first refusal at 110% of whatever the figure is at the time for Xspand to purchase future tax liens?"

Comptroller Poloncarz: "Correct."

Director Keysa: "Without any further bidding process, are you comfortable with that?"

Comptroller Poloncarz: "If it is on the level of 110%, then I am comfortable with it because I think it is fair to say, when we look at the amount of money that Erie County collected on its own and when we look at what is the standard in the industry, that is actually above the standard in the industry. What Erie County issued as a part of an RFP, the process and received that back in the process that yes this is what Xspand would do, it confirmed that they wanted our business and they were willing to pay a premium for that. I know, if I were in the private sector, I would be requesting the same type of right of first refusal. However you don't get right of first refusal without giving something in return and giving something in return is the 110% payment to the County. It makes sense and I know it was explained earlier with the way the priority is set on our tax liens, it is a reversed priority. I know that you would understand if you are doing a debtor creditor issue you succeed filing and the first to file has the first priority, this situation is different and it boggles the mind a little when you are dealing with most other debtor creditor issues, the last to file is the one that has the priority. So it is in the best interest for Xspand to keep that priority and the way in which they are willing to keep that priority is by paying the County premium for it at 110% over three years. Could it be extended over a longer time line, off course it could. I think when the discussion was held we thought three years was a fair way to based on the time line it has taken to foreclose some of these liens it is not a one year process it is not a two year process but it almost a three year process from the date of the tax lien sale before the foreclosure actually takes place and that is why it wasn't arbitrary number that was chosen it was based on tax line sale to foreclosure proceedings."

"One more thing, I was talking about the RAN. This gives me the opportunity, in my eyes, to potentially borrow less then the \$98-100 million that is technically on the table. We don't know what we are really going to need until this transaction is through. If this transaction goes through I think it is fair to say that we are not going to need a larger amount. We may even be able to do a smaller amount if this transaction does not go through then it has an impact on our cash flow and we will need to borrow a larger amount. I am not going to defend what the administration does. People have criticized, saying that Comptroller Poloncarz and Mr. Giambra are alike; I am not here to defend something the Administration has proposed. I just wanted to say this for the record. The original deal I thought was a bad deal, I voted no and I told them I was going to vote no and other independent Directors were not inclined to continue with the transaction and a new process was created. My office called for an RFP to be issues and not just to negotiate with Xspand. The RFP was issued and from what my understanding is sent to the two major player sin the industry. Other players were not communicated to because of the negative impact they have had in other communities of New York State. I don't know who if it other wise saw the RFP because as you are well aware that is an open ended process. Our office had been very critical of the RFP process of this Administration in different venues in the past and continues to see if we see issues with a bad issuance of an RFP so to speak. I'm not here to defend the Demonstration I am here to defend what I think is a very good deal for the taxpayers of Erie County for the people of Erie County and the community. This give this County the opportunity to receive up front assets, 105% for the 2006 deal and 84.5% for the prior deal that we probably not be able to achieve on our own but by using the private sector and then allowing my office to invest that money, restore our fund balance, get us to the point we need to without raising taxes. There is one thing I know that nobody on this board wants to see is the restoration of the fund balance by raising taxes. This ensures we get to the 5% level, this ensure we have the money in the bank to keep moving forward for Erie County without raiding taxes and that is key we have to look forward to because we are not going able to raise that amount of money and raise our fund balance to that level with a small little efficiency here and there nor are we going to be able to do it in a three of four year time period. I am dead set against raising taxes and I think this is a good way of restoring our fund balance by protecting that income that we receive, not spending it willy-nilly so to speak and I will not allow the administration to do that without coming under heavy fire. If we can restore our fund balance back to a level that we need to get our bond rating back up to the level than it should be in a shorter period than it would take otherwise."

Director Keysa: "Is there a note balance outstanding? It is of Erie County or ETCC?"

Comptroller Poloncarz: "That is the ETCC."

Director Keysa: "That is due on or about the 30<sup>th</sup> of this month?"

Comptroller Poloncarz: "That would be the projected amount as of the 30<sup>th</sup>. I don't think it is due on the 30<sup>th</sup> but that is the payoff figure. That is one of reasons why I criticized the original transaction that was proposed because it had another note involved which based on the interest rate at the time would have been 9.5-10% at the time. Why are we paying Xspan interest on something that is our asset and now the proposal on the table is that we sell them our asset at the rate that we can't achieve otherwise, a rate that we'll receive that is much better than in the past and we can use that money."

Chairman Baynes: "So the bottom line is as the way the contract is written you wouldn't sign it either as an attorney or the Comptroller?"

Comptroller Poloncarz: "Let's put it this way, we will sign it and I will ensure that on the date of execution of the document that there is a final number in there; I will not allow the transaction to go forward until the final number is in there. It is my understanding that these documents are dated as of April 30<sup>th</sup> and they have to be signed as of the date of closing. Those documents will not be signed unless we have that number in there."

Director Keysa: "Will you ensure that there is a non-collusive provision?"

Comptroller Poloncarz: "That parties have agreed to it, I will make sure it is in there before my office will sign off and look at this one more time. We will ensure that that certificated is included as part of a closing package."

Chairman Baynes: "At this point the Administration and the Legislature have already approved this."

Comptroller Poloncarz: "As it stands yes, my understanding was that the documents were going to be provided back to the Legislature for their review not their approval. As it stands, I think 12 of the 15 voted in favor of it last time and it is my understanding that in talking to a number of them one on one, they are still in favor of it as they believe the financial benefit to this community is fantastic."

Chairman Baynes: "Right, I am sure it is, but they approved this March and we just got the contract on April 2<sup>nd</sup>. I just hope you understand where our questions come from. How can you approve something that wasn't even prepared until April 2<sup>nd</sup> and they approved it."

Comptroller Poloncarz: "I understand. There are many times when I worked in the private sector as an attorney and I think it's fair to say Mr. McNamara could attest, that there are times when you get many drafts, would approve it before it went to a Board of Directors and the Board of Directors approved the draft documents under the assumption that the final documents were of the same substance of the draft documents with the addition of the final dollar amount."

Chairman Baynes: "As I stated at the last meeting, we are purchasing a building in Houston, Texas. There are 11 revisions so far and in every one of the draft there are numbers. This is the first time I have ever seen a contract without numbers. Thank you very much."

David McNamara: "Mr. Poloncarz before you go, just one more question. You stated in your conclusion that you think this is a good deal financially and I think a part of that is because the percentage bid rate for Erie 1-4 is 84.2%. Is that market or above market?"

Comptroller Poloncarz: "To my understanding it is above market. There was actually a proposal to do a roll up of last year because the true percentage of sale was around 70%."

Director Keysa: "Is that right?"

Comptroller Poloncarz: "It was actually lower than that, 49% was what was offered less than a year ago as a roll up of these prior ones which was do an all out roll up sale and now we are talking 84%."

Chairman Baynes: "Xspan offered 49% last time. Again, see this is what I mean."

Comptroller Poloncarz: "You asked me a question and let me have the opportunity to answer. There were discussions but it did not occur. It was a different type of deal. When discussion were held and they reached our office, from the Administration said these are general discussions going on and proposal that are being valued out and would you be in favor of these; my answer was no. The original thought was 70% and the final number came in much lower and we said no; we now have a much better deal. You can talk about it because it went to the RFP process and was reached because of the original projection of that deal plus the rejection of what would have been the Erie 5 transaction but we've gotten a much better deal for the tax payers as a result and I am not ashamed to say that."

David McNamara: "Will your view as to whether it is good deal or not change if the percentage bid rate for the Erie 1-4 rates was 76%?"

Comptroller Poloncarz: "It would depend on the numbers, of course. I know there have been a lot of numbers thrown around, but based on how you interpret this, I would have to look at the final number. I can't say off the top of my head whether it is 76%, 75%, 82% or 84% but I believe that it is the numbers that were in the original proposal, while they may have no number in this document as the Chairman has eluded to that is the proposal on the table. I think Mr. Garzone would like to say something."

Chairman Baynes: "Mr. Poloncarz if you took that \$410,000 out of the non-enforceable liens, it would drop the percentage to 76% and it is not 84%."

Comptroller Poloncarz: "Where are you referring to?"

Chairman Baynes: "Exhibit I."

Comptroller Poloncarz: "I think it is still a good deal because we are talking about a defective and non-enforceable lien. Those which even the County by itself couldn't collect."

Chairman Baynes: "I'm not questioning whether it is a good deal or not I am just questioning whether the number should be 76% or 84%."

Comptroller Poloncarz: "My answer was to Mr. McNamara's question whether or not I thought it was a good deal. It depends on which liens you are talking about, the reduction of \$410,000 which I think would put it at a lower percentage rate are for non enforceable liens. That in itself tells me that it is still a good deal because we are talking about gains that we can't enforce or defective in their own right because of environmental reasons."

Director Keysa: "Mr. Tuppen said that the majority will be at a different interest rate."

Chairman Baynes: "That 84%, did I hear that is was 49%."

Comptroller Poloncarz: "No it was a different proposal. They wanted to do a roll up of the Erie 1-4 using different terms. It was a different proposal. The original number was around 70% and as far as it was looked from my office by Mr. Gach to determine that it was really around 50% at which time even Mr. Vetter may have been budget Director at the time and he is nodding his head affirmatively at the time and the number was ridiculous. The conversation stopped."

Chairman Baynes: "Thank you very much, Comptroller Poloncarz. Does anyone have more questions?"

Director Keysa: "I have no further questions but I am not sure that I am prepared to vote on this today. I would like to consider some of the items that have been discussed today and believe we have more individuals that have come to speak. Mayor Frawley from Angola, who I think has recently left. That leaves Mary Holtz from the Town of Cheektowaga; I believe she wanted to make a few comments and we also have someone here from the Anti- Flipping Task Force."

Mary Holtz: "Hi, my name is Mary Holtz, the Town Clerk of Cheektowaga. I don't want to reiterate what we said last time but it seems to me that I just want to say something with regard to Joseph Maciejewski. I don't think towns are coming with their hand out, we realize that we may be held by the law; all we are saying is that we have concerns about our towns, our homes and our property. I think what I heard today that here is something in here that is protecting us, is that the 9% or something the County can buy back is that something you understood with this program?"

Director Keysa: "Hopefully the two of you will be able to get together to discuss that."

Mary Holtz: "Yes, I would just like to have a little more information. We are not coming open-handed; we just need the County to understand that we are very concerned about our town."

Director Keysa: "I understand, the County should run like a business. This is not the typical sale of an asset, a financial transaction by a responsible party. It is also important that the community stays whole."

Mary Holtz: "Well I thought the role of the County was here to serve us also."

Director Keysa: "I want to also make sure that we are not having a lot of decrepit buildings that are growing and leading to blight and will be vastly more expensive to take care of later."

Mary Holtz: "And they already are. Some of the properties which we have demolitions on right now have tremendous liens on them already; some up to \$50,000 – \$60,000 that we are demolishing. I thank you for your time."

Executive Director Vetter: "Mr. Chairman, we have Kathleen Lynch from the Anti Flipping Task Force."

Kathleen Lynch:

"I am also an attorney at the Western New York Law Center and have mass coordinated this effort. The Co-Chairs of the Task Force sent a letter to the County Legislature just articulating some concerns that we have from the flipping perspective. We are not addressing any of the fiscal issues at all. I want to give you a little background. The Task Force was established to combat the problem of flipping in the City of Buffalo which is a destructive real-estate practice that involving the purchase and quick resale of low value and often vacant properties at deflated prices. The problem is that most of these properties are often vacant and have building code violations that are not being address. Much of the purchase and sale in the City has occurred through internet auction sales that are significant, by E-Bay. Buffalo has become known internationally as a hot real estate market for this activity. If you go on the internet and type in "High Cash Flow" you put in "Buffalo" you put in "Flipping" you will find that Buffalo will come up and a lot of people actually target sales or tax foreclosure sales to purchase these properties cheaply. People all over the world started purchasing these properties and what happened was building inspectors where not able to keep up with the different owners or site people and more importantly really the city court judge has no jurisdiction over someone in Australia. They can't make that person come and address housing code violations even when it comes to not just another Country but another State. They can't really bring that person here to effectively address housing code violations. Our main mission was to first learn about how Buffalo came known to this activity and attractive to flippers. As you begin to examine it, we saw that *in rem* sales, HUD foreclosure sales and private foreclosure sales and other government foreclosures where really the source for this activity. As we undertook to do this project we were contacted by building inspectors, housing core contacts, community groups and people at the MBBA problem to our attention. We learned that about 1,500 properties in Buffalo were essentially lying vacant in deteriorating conditions with no buyers and no one addressing the properties conditions and problems. The interesting thing is that these properties were more expensive then the other properties and less attractive to flippers. So from our perspective, even though it was clearly a problem for the community, our concern became what would happen if there was essentially a fire sale on those properties. So our co-chars were responsible for bring MBBA and JER to the City of Buffalo and to start having discussions about those properties. What we have learned is that those particular properties, particularly beginning with low value properties that is something that you should consider; the actual value of the property and whether there are vacancies because if there are vacancies it is going to be difficult to collect money on those liens. That is the first thing. The second thing we realized was that there was no control over how these proprieties where going to be sold if in fact they were foreclosed upon. I recall in one of these meeting that JER on 60 properties out of all the properties that they had so it wasn't that much but the City couldn't do anything about it. They had no recourse with respect to these properties. Ultimately after discussions with MBBA and JER, they agreed with the City to take about 600 properties back. My biggest concern is how are these going to be disposed of? Our concern with MBBA and JER was how where they going to sell them? During the course of our discussion we did talk to American Bank Funding Service but we never did have a conversation with Xspand, so I don't know what there approach to this would be but when we talked to them about it as an alternative they told us that they do sell properties on the internet, that is how they dispose of the properties and that is our main concern here and our caution to you is too look at how these properties are going to be disposed of."

Chairman Baynes:

"Who told you they sold on the internet?"

Kathleen Lynch:

"American Tax Funding Service, the company themselves and I know that they operate in Schenectady and Youngstown, Ohio. I do know that there is a flipping problem in Youngstown, Ohio but not sure if it is related to that particular company, I can't say that. So again our concern became how do you maintain control of the property? Is the City taking them back? It actually allows them to maintain control over properties but with the City taking them back it actually allows the City to exercise control and put them through the *in rem* process and we have established some controls at the *in rem* process to make sure that properties aren't flipped there. The data that was used at the sale last year that prevents properties from being resold at more than 120% of the purchase price within 6 months. It also requires bidders take responsibility for building code violations and this year we hope that there will be more controls at the auction as that will prevent people form basically taking those properties and reselling them and reselling them without addressing the building code violation. I think that it is incumbent upon you to look at that issue an I think it is worth a conversation with Xspand about how they will ultimately dispose of properties and I think it is a mistake to think that by simply having a name and address that that is going to give the County the ability to enforce building code violations. It doesn't; most of these flippers work through LLC's sell form one LLC to the next. It is a very difficult problem especially for people in this jurisdiction."

Chairman Baynes:

"Does anyone have questions for Ms. Lynch?"

Director Keysa:

"No questions but I hope that Xspand is willing to meet with her and discuss further their processes and develop a way with them that if this contract is approved that your concerns would be met."

Kathleen Lynch: "I would be happy to do that; again I think it might be incumbent upon the County to make it be made part of the contract."

"I would like to thank everybody today; the Xspand folks joining us from New Jersey, the County Executive, Mr. Polancarz and all of our other speakers. There being no other business, I move to adjourn."

Director Keysa: "I suggest that because we have not acted on this that before we adjourn we table this and agree upon a date to get back together on this."

Executive Director Vetter: "Might I suggest Mr. Chairman that staff coordinate schedules to get back on a date."

Chairman Baynes: "Sure that is fine."

Director Kruly: "If all we are going to take up next meeting is this item, then we can just recess this meeting."

Director Keysa: "We need to deal with the tabled items first."

Chairman Baynes entertained a motion to table. Director Kee moved and Director Johnson seconded. Without further discussion the board voted unanimously to table the Xspand contract and the proposal to outsource mailing.

Chairman Baynes: "We will come back to work on same dates in the next couple of days for our next meeting on this item. Could I get a motion to recess?"

Chairman Baynes entertained a motion to recess. Director Kee moved and Director Kruly seconded. Without further discussion the board, voted unanimously to recess *sine die*.