

Erie County Fiscal Stability Authority
July 26, 2007
Meeting Minutes

(Note: the following is a draft copy of minutes of a meeting of the Erie County Fiscal Stability Authority ("ECFSA"), which was held July 26, 2007 at 11 a.m. in the Auditorium of the Erie Community College City Campus. These minutes will not become final until approved at a subsequent meeting of ECFSA Directors, and may be amended before approval)

Chairman Baynes: "Good morning, I would like to welcome everybody here today. I am feeling under the weather today and Director Kruly is going to run the meeting today and I appreciate that Ken; thank you Ken."

Director Kruly: "Thank you Mr. Chairman. We are going to be primarily talking about County bonding although we have a whole bunch of County contracts that the County has submitted for approval. We will be working our way through those. In order to move something that the Comptroller's office has asked us to expedite because there is an 11:00 a.m. closing, we would like to take out of order the item which concerns the State of New York doing financing for Sewer Bonds and I would ask Comptroller Poloncarz or Mr. Gach come up and explain what that is all about."

Comptroller Poloncarz: "Thank you and good morning. I appreciate your expediting this matter. What this is in relation to is a pooled financing that the New York State Environmental Facilities Corporation is doing on behalf of 22 municipalities across New York. It is a \$146 million bond issue. Erie County has a small portion of it only \$5.3 million which is in relation to the Sewer District in Erie County. We actually had not anticipated presenting this to you. We were under the impression from advisement and counsel that because this was the clean up and close up of a transaction that had been entered into a number of years ago that it would not be necessary for the Fiscal Authority's approval however from recommendation from bond counsel last Wednesday they recommended that we get the approval from the Fiscal Stability Authority. We immediately submitted the documents and asked for your approval. I would not have wanted to do it on such expedited notice but unfortunately that is how the situation went. The reason we are asking your approval on this transaction to go through the New York State Environmental Facilities Corporation is because the interest rate that is available on this transaction is far superior than any of us could receive on our own; whether it was ourselves or the Fiscal Authority as the interest rate is basically halved as part of the pooling arrangement with Erie County being part of a \$146 million deal, ours only being a small portion of it \$5 million, in pooling the resources of not only the NYS Environmental Facilities Corporation but with 21 other municipalities throughout New York State. We were

able to get a far superior interest rate than any party could get on their own and therefore due to the fact that this is closing today in New York City, we are asking for the approval of both the borrowing by the County of Erie for the Sewer District in relation to the EFC closing as well as the contracts that are related to the project which I believe everything was forwarded to you and a resolution is in place that if it is agreed to and passed by this entity we are asking for Mr. Keysa the Secretary to sign it as soon as possible. We will then take it and fax it out to the closing in New York City to confirm that approval had been received. Once again I do apologize for the late notice. We were under the impression that because of the age of the transaction and it was relating to 2001 and 2002 projects as well as a prior deal that had been closed in 2001 and 2002 that the approval of the Authority had not required. We were advised of that in the middle of last week at which time we were advised to get the approval of the Authority to ensure that all i's were dotted and t's were crossed."

"I would be glad to answer any questions and I believe Mr. Whetham is here for the Sewer Management to talk about the specifics of the projects if you have any questions about the specifics of the contract and how it would be utilized but it is safe to say that the transaction itself is a very good transaction for the people of Erie County and will save, I believe \$2.5Million a year in interest cost alone through the life of these bonds by going through the pooled arrangement with the State Environmental Facilities Corporation than any of us could get on our own."

Secretary Keysa: "I assume that the \$2.5 million is over the life of the bond and is not annually because you are only borrowing \$5 million."

Comptroller Poloncarz: "Yes, it's the life because we are only talking about a \$5 million borrowing."

Director Kruly: "Are there any other comments or questions. If not I would like a motion."

Secretary Keysa moved to approved, Director Goodell seconded, and the Directors voted unanimously to approve the following resolution:

Resolution No. 07-68

COMMENTING ON AND APPROVING COUNTY BORROWING AND RELATED CONTRACT FOR SALE OF ERIE COUNTY BONDS TO THE NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION

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 contract listed below; and

WHEREAS, the ECFSA Executive Director, after consultation with the ECFSA Staff, has recommended approval of said contract via written correspondence to each ECFSA Director; and

WHEREAS, Section 3959(2)(i) of New York Public Authorities Law requires that, during a control period, the ECFSA review the terms of each proposed issuance of bonds or notes, comment on the prudence of each issuance and indicate approval or disapproval of the proposed borrowing within thirty days after notification; and

WHEREAS, Section 3959(2)(i) of New York Public Authorities Law also requires that, during a control period, no such borrowing shall be made by the County unless first reviewed, commented upon and approved by the authority; and

WHEREAS, on July 20, 2007, the County Comptroller provided the ECFSA with the County’s proposed terms for the sale of \$5,374,440 of bonds to the New York

State Environmental Facilities Corporation (“NYS EFC”) State Clean Water and Drinking Water Revolving Fund and requested that the ECFSA approve the borrowing and related contract at its July 26, 2007 Board meeting; and

WHEREAS, the ECFSA was first notified of this sale of bonds on July 19th despite the fact that the borrowing has been in process for at least 6 months prior, that proposed issuance terms had been available for some time and that the bonds were scheduled to close today; and

WHEREAS, borrowing through the NYS EFC fund provides a 50 percent interest rate subsidy to the County, allowing the County to achieve savings for County taxpayers that an ECFSA borrowing could not match; and

NOW, THEREFORE, BE IT RESOLVED that the ECFSA approves the County borrowing through sale of \$5,373,440 in County bonds to the NYS EFC and the related contract submitted by the Erie County Department of Environment and Planning as listed below, plus related interest costs.

Department	Description	Amount
Erie County Environment & Planning	Bond issuance – NYS Environmental Facilities Corporation - EFC revolving funds revenue bonds	\$5,374,440 plus related interest costs

This resolution shall take effect immediately.

Director Goodell: “Does that also approve the resolution or just the contract?”

Secretary Keysa: “That is moving the resolution.”

Comptroller Poloncarz: “Thank you.”

Director Kruly: “Back to the order of business. We need the approval of the minutes which were prepared by our staff and Secretary Keysa. Do we have a motion to approve the minutes?”

Director Johnson moved to approved, Chairman Baynes seconded, and the Directors voted unanimously to approve the following resolution:

Resolution No. 07-64

APPROVING MINUTES AND RESOLUTIONS FROM JULY 6, 2007 MEETING

BE IT RESOLVED that the Erie County Fiscal Stability Authority approves the minutes of its July 6, 2007 meeting and ratifies and affirms three resolutions numbered 07-61, 07-62 and 07-63 that were approved on July 6, 2007.

This resolution shall take effect immediately.

Director Kruly: “The third item on the agenda is concerning the RFP submitted for the legal services for the Authority for the coming year. Mr. Vetter?”

Executive Director Vetter: “Very briefly we were required under public authority’s law to send out an RFP prior to the year end contract with the current law firm Phillips Lytle. We sent out the RFP on June 29th. The distribution went through Business First for two weeks. We did send it to the Contract Reporter with the State and we did get list of law firms from the local Chamber of Commerce and from the Empire State Development Corporation on minority firms. We sent the RFP. Three firms responded to the RFP; one from our current law firm Phillips Lytle, one from Damon & Morey and a third from a an firm out of New York City. Chairman Baynes had asked Director Kruly and I to go through those firms and to do an evaluation based on reasonable criteria and maybe ask Director Kruly to go through the evaluation.”

Director Kruly: “We received proposals from three firms; Phillips Lytle, Damon Morey both from Buffalo and a third firm from New York City. We evaluated them. They were all good firms and we are comfortable with all of the work that has been done by Phillips Lytle and we think that the proposal was a good one. We are recommending that we consider their services for another year. We have a resolution on the table before you.”

“If someone has questions, if not I will accept a motion.”

Director Johnson: “Mr. Chairman, looking at Resolution 07-65, are we going to have to do this on an annual basis?”

Director Kruly: “That is correct.”

Executive Director Vetter: “If I could Director Johnson, right now with prior authorization from the Board an RFP could be for three years. There was not prior authorization from the Board so that a year from now when this contract is over, the Board if it deems appropriate can make the next legal engagement for three years or could continue the practice of going on a year to year basis with law firms.”

Director Kruly: “Any other questions or comments. Do we have a motion to approve?”

Director Goodell moved to approved, Director Johnson seconded, and the Directors voted unanimously to approve the following resolution:

Resolution No. 07-65

APPROVING ENGAGEMENT OF LEGAL COUNSEL

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, Section 3954(4) of New York Public Authorities Law grants the ECFSA the power to make and execute contracts or agreements necessary or convenient to carry out its purposes; and

WHEREAS, the ECFSA issued a request for proposals for legal services in June 2006 and, upon receiving responses to the request, a selection committee of ECFSA Directors and staff evaluated proposals received and selected Phillips Lytle LLP to provide legal services to the ECFSA on an as-needed basis for a period of one year;

WHEREAS, the one-year agreement with Phillips Lytle LLP expires on July 26, 2007;

WHEREAS, the ECFSA re-issued a request for proposals for legal services in July 2007 and, upon receiving responses to the request, a selection committee of ECFSA Directors and staff evaluated proposals received and selected Phillips Lytle LLP to provide legal services to the ECFSA on an as-needed basis for a period of one year;

NOW THEREFORE BE IT RESOLVED, that the ECFSA engage the firm Phillips Lytle LLP to provide such legal services on an as-needed basis as requested by the Chairman for a period not to exceed one year from the signing of a letter of agreement. Such services shall be undertaken for such amounts and on such terms as agreed upon by the Chairman, ECFSA Director or the Executive Director; and

BE IT FURTHER RESOLVED that this resolution shall supersede any previous resolutions of the ECFSA with regard to contracting for legal services.

This resolution shall take effect immediately.

Director Kruly: “Next Mr. Vetter the contracts that we have in front of us.”

Executive Director Vetter: “Director Kruly, let me go through. There is one slate of contracts, if you look at your contracts matrix, pages 1 through 3 that are being put forward as a slate. There were questions on only one of the agreements that may or may not have to be separated out. I believe Mr. Rubin is here.

There was a question with regard to number seven on page three on the Law Department lease on the potential extension. Right here it is listed as two years and the question was whether or not that could be for a shorter period of time. Mr. Rubin.”

County Attorney Rubin: “Thank you that is the exact same question that the Erie County Legislature asked me when we had this item before them. We did approach the landlord and not surprisingly, the landlord declined to amend the lease being that our last three year lease had a two year renewal option which we were proposing to exercise and the landlord was not interested in limiting that for one year. I would note that the two years probably, given the space study that is going on and I have had conversations with Commissioner Loffredo and other that given the Space Study it probably would be cutting it very close. If the space study is able to recommend and the County is able to provide our department with space within the County offices within a 12 month period is probably cutting it close anyway. So the two year situation probably makes a lot of sense just in even thinking down the road of relocating the County Department of Law to County owned offices which in fact we did try to do last year. Our efforts were stymied because of a union contract issue.”

Director Kruly: “Mr. Rubin, have you heard more about the possibility of a one year lease?”

County Attorney Rubin: “Yes and they said no.”

Director Kruly: “Is there anything in the contract that would allow us to get out on shorter notice at our decision?”

County Attorney Rubin: “No.”

Director Kruly: “I know that there are normally things in County contracts that say that they are based on the availability of funds.”

County Attorney Rubin: “Well we do have appropriations and the County, while that is a typical provision to put in contracts and in fact it has been upheld. Every government runs the risk that if they were to in fact not appropriate the funds then the next time that they tried to enter into a multiyear contract they could run some chance that the party is not willing to enter into a multiyear contract with them if they view that the government is likely to unilaterally terminate the contract earlier than was expected by two parties. In 2008, if the space relocation study is going well than the County Legislatures could consider not approving appropriating funds in 2009 but I think that is getting ahead of ourselves a little bit here.”

Director Kruly: “The power of the purse could in effect cancel that thing out if there was an alternative at that time.”

County Attorney Rubin: “Cuts both ways and I think that given that it would probably make a lot of sense. Once we know we can go somewhere because negotiating before you know where you’re going to go is kind of difficult and the future of the next administration would try to negotiate an early termination of the lease in any event because frankly the leases expires on December 31st and the middle of winter is not necessarily the best time to be releasing the office space anyway. So it might be in the landlords best interest to negotiate a termination much earlier than that but I think it’s best left to a negotiation rather than to heavy handedly just tell them in advance what we are going to do.”

Director Kruly: “Other questions or comments?”

Director Johnson: “Mr. Chairman, since we have Commissioner Loffredo in the audience I would just like an explanation on where are we with the space study.”

Commissioner Loffredo: “Good Morning.”

At this point, Chairman Baynes attempted to rise but collapsed. Director Kruly moved to adjourn, seconded by Director Goodell and unanimously approved by the Directors at approximately 11:15 a.m.

Respectfully submitted,

Stanley Jay Keysa
Secretary