



Town of Cicero

Cicero Commons Project

Report of Examination

Period Covered:

March 1, 1998 - September 30, 2004

2004M-82



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State of New York Office of the State Comptroller

Division of Local Government Services and Economic Development

May 2005

Dear Town Officials:

One of the Office of the State Comptroller's top priorities is to identify areas where local governments can improve their operations and provide guidance and services that will assist local officials in making those improvements. Further objectives are to develop and promote short-term and long-term strategies to enable and encourage local government officials to reduce costs, improve service delivery and to account for and protect their governments' assets.

The reports issued by this Office are an important component in accomplishing these objectives. These reports are expected to be a resource and are designed to identify current and emerging fiscally related problems and provide recommendations for improvement. The following is our report on the Town of Cicero — Cicero Commons Project.

This audit was conducted pursuant to the State Comptroller's authority as set forth in Article V, §1 of the State Constitution and Article 3 of the General Municipal Law. The report contains opportunities for improvement for consideration by the Town Board.

If we can be of assistance to you or if you have any questions concerning this report, please feel free to contact the local regional office for your county listed at the back of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government Services
and Economic Development*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Background

In 2003, a major development project in the Town of Cicero experienced a financial failure that resulted in the Cicero Local Development Corporation (CLDC) defaulting on \$15,250,000 of its 40 year revenue bonds. The bonds had been issued just two years earlier to finance the construction of a recreation center which was part of a proposed community campus to be developed on approximately 100 acres of land donated by the Town to the CLDC in 1999. The project, known as the Cicero Commons (the Project) also included plans for residential and commercial development. Because the Town had entered into certain agreements with the CLDC relative to the bonds, the Town incurred a \$246,929 financial loss and was given a significant downgrade in its bond rating by a major investment rating service.

Scope and Objectives

The objective of our audit was to review the Town's involvement in the Project. Specifically, our audit sought to answer the following questions regarding Town Board actions from March 1, 1998 to September 30, 2004:

- Did the actions taken by the Town Board in regard to the Project comply with statutory requirements?
- Did the Town Board take appropriate actions and exercise due diligence in evaluating the Project development plan prior to involving the Town in the Project?
- Did the Town Board adequately monitor the financial performance of the CLDC to protect the interests of the Town?

Audit Results

Certain Town Board actions in regard to the Project did not comply with applicable statutory requirements. The Town Board did not have legal authority to transfer the land to the CLDC without receiving substantial and valuable consideration in return. Also, the Board agreed to lease the recreation center from the CLDC while at the same time executing another agreement to lease the facility back to the CLDC. This transaction was undertaken for no other reason than to lower the credit risk of the CLDC bonds and make them more attractive to potential investors. The Town had no legal authority to enter into a lease for this purpose.

The rapid financial failure of the Project raises serious questions about the process that Town officials used to evaluate the Project's economic feasibility and the potential risks to the Town. The Town Board did not exercise appropriate caution and due diligence prior to entering into a complex financing agreement with the CLDC that subjected the Town to financial risk. Key decisions were made based on a development plan that did not contain adequate information to assess the feasibility of the Project or to determine whether the projected revenues were realistic. Instead, a majority of the Town Board accepted revenue estimates that were not supported and relied on the verbal assurances of promoters of the Project that the recreation center and other land development would ultimately generate over \$1 million in net profits annually to fund debt service. Despite the complicated nature of the transaction, the Town Board did not retain any independent experts to help evaluate the risks associated with the Project's key revenue assumptions. Furthermore, some of the risks associated with the financing plan should have been obvious and should have caused all Town Board members to question the credibility of the proposal and proceed more cautiously. As a result, the Town received no compensation in return for transferring ownership of Town owned property, was obligated to cover CLDC's shortfall of \$246,929, saw its bond rating significantly dropped and continues to incur litigation costs.

The Town Board did not adequately monitor the financial condition of the CLDC after the bonds were issued and was not aware of the CLDC's serious fiscal problems when it adopted the 2003 budget. As a result, the Board appropriated \$1,026,013 for lease payments, the full amount of the annual debt service on the bonds. By appropriating this money, the Town was obligated to cover the CLDC's \$246,929 shortfall on its November 2003 debt service payment. For 19 months after the issuance of the bonds in June 2001, Town officials did not assert their right under its agreement with the CLDC to receive financial and budgetary information. This information included monthly financial reports on CLDC operations. In addition, although the bond indenture provided that the Town could examine CLDC financial records as long as bonds were outstanding, Town officials made no attempt to do so.

Comments of Local Officials

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our recommendations and indicated they plan to take corrective action.

Introduction

Background

The Town of Cicero (Town) is located in the central region of upstate New York in Onondaga County, and is a suburb of the City of Syracuse. In 1984 a local family gave the Town approximately 100 acres of undeveloped land. In March 1998, a former New York State Assembly Majority Leader presented the Town Board with a proposal to develop the property as a “comprehensive community campus.” The campus would include such elements as a senior apartment complex, a youth center, a health care facility and modest commercial development. The Town Board supported the concept of the community campus as a development strategy. This concept evolved into the project known as the Cicero Commons (the Project).

The Metropolitan Development Association (MDA), a not-for-profit corporation, agreed to assist the Town with the Project by reviewing the Project master plan and providing recommendations for development of the land as well as financing alternatives. The Metropolitan Development Foundation (MDF), an affiliate corporation of the MDA and its project funding vehicle, received a New York State grant, that was used to hire an engineering firm to study the feasibility of the proposed project and to further explore the development project. In January 1999, that study concluded that conceptually the Project was feasible.

In March 1999, the Town entered into a three party Project support agreement with the MDF and the Cicero Local Development Corporation (CLDC). The CLDC agreed to take over the development plan and became responsible for obtaining financing for the Project and for engaging a developer. In April 1999, the Town transferred ownership of the 100 acres of land to the CLDC for no consideration. The CLDC was created in 1995 under the New York State Not-For-Profit Corporation Law. (A general discussion of local development corporations can be found in Appendix C).

In February 2000, the CLDC signed a development agreement for the construction of a multiple use community recreation center on 14 acres of the land that would include two ice rinks and a YMCA, and a combination of residential and commercial development on the remaining 86 acres of land. The Project would be funded by corporate debt issued by the CLDC to be paid back using profits generated by the recreation center and from the development of other sections of the land. Although the Project did not receive any direct funding from the Town, the Town Board entered into a financial agreement with the CLDC by which it pledged to back the CLDC

bonds. The backing of the bonds was subject to the annual appropriation in the Town budget.

In June 2001, the CLDC issued permanent financing for construction of the recreation center consisting of two series (Series 2001A - \$15,250,000 and Series 2001B - \$1,350,000) of 40-year revenue bonds. The estimated cost of the overall Project at that time was \$19,840,313 (See Appendix D for a summary of the Project's budget).

At the time of the bond sale, the members of the CLDC established another entity, the Greater Cicero Local Development Corporation (GCLDC) for the purpose of coordinating the development of the remaining approximately 86 acres of land. The CLDC transferred the 86 acres of land to the GCLDC, but that land and certain revenues derived from its development were also pledged as security for the bonds.

Construction of the recreation center was completed in the Spring of 2002. However, the profits through the remainder of 2002 and into 2003 from the recreation center were far below projections and no revenues were realized from the development of the rest of the campus. As a result, overall revenue proved insufficient to cover debt service payments and the CLDC found it necessary to expend a \$1.1 million debt service reserve fund that had been established from the proceeds of the bonds.

In November 2003, with only about \$266,000 in available funds remaining, the CLDC defaulted on the \$513,000 bond interest payment that was then due. The Town Board took no action to prevent the default, and had to pay \$246,929 to meet the November 2003 obligation because the Town had appropriated moneys in the 2003 budget for lease payments as part of the pledge to back the LDC bonds. Moreover, because of the default and the Town's temporary inaction, Moody's Investment Service reduced the Town's bond rating to speculative quality.

In May 2004 the CLDC again defaulted on its bonds. The Town Board did not include an appropriation for the recreation center lease payment in the 2004 budget and therefore was not obligated to make and did not make any bond payments in 2004.

The Town initiated a pair of lawsuits in April 2004 in an attempt to recover the full amount of its November 2003 bond payment. The first lawsuit has been dismissed by the court, and the second was still pending at the end of November 2004.

Objectives

The objective of our audit was to review the Town's involvement in the Project. Specifically, our audit sought to answer the following questions:

- Did the actions taken by the Town Board in regard to the Project comply with statutory requirements?
- Did the Town Board take appropriate actions and exercise due diligence in evaluating the Project development plan prior to involving the Town in the Project?
- Did the Town Board adequately monitor the financial performance of the CLDC to protect the interests of the Town?

Scope and Methodology

Our audit examined actions taken by the Town Board relative to the Project for the period March 1, 1998 to September 30, 2004.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. More information on such standards and the methodology used in performing this audit are included in Appendix B of this report.

Comments of Local Officials and Corrective Action

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our recommendations and indicated they plan to take corrective action.

The Town Board has the responsibility to initiate corrective action. Pursuant to Section 35 of the General Municipal Law, the Town Board should prepare a plan of action that addresses the recommendations in this report and forward the plan to our office within 90 days. For guidance in preparing your plan of action, you may refer to applicable sections in the publication issued by the Office of the State Comptroller entitled *Local Government Management Guide*. We encourage the Town Board to make this plan available for public review in the Town clerk's office.

Town Exceeded Its Legal Authority

In early 2000, the CLDC contracted for the development of the Project. Both the Town and the CLDC agreed that it was necessary to issue corporate debt to finance construction of a recreation center as the first phase of the Project. A key understanding was that this phase would not receive any funding from the Town. The CLDC debt would be paid using profits generated by the recreation center and from the sale or lease of land not needed for the recreation center. However, CLDC representatives informed the Town Board that Project financing was not going to be feasible unless the CLDC could obtain the Town guarantee to back the loan.

In September 2000, the CLDC's bond attorneys formally proposed a lease/sublease financing agreement that was designed to lower the credit risk for the CLDC bonds. Under the proposed lease agreement, the Town would lease the recreation center from the CLDC for lease payments equal to the amount of the bond payments. The CLDC could then pledge these lease payments as security for the loan. Pursuant to the sublease, the CLDC would operate the facility, fund the bond payments, and give the Town a matching credit against the Town's lease payments. Thus, the semi-annual lease payments and sublease credits would be paper transactions to the Town and would not require any actual cash expenditures, unless the CLDC failed to fund the bond payments. This arrangement served no other purpose than to assure potential lenders that the Town would cover any debt service shortfalls if the CLDC was unable to fund the bond payments. As additional protection for the Town and the lenders, the CLDC bond issue also included \$1.1 million to set up a debt service reserve fund to cover any short-term cash flow difficulties. Because the State Constitution generally prohibits municipalities from giving or loaning their credit, the terms of the lease also provided that the Town was under no legal or moral obligation to appropriate or make funds available for the lease payments and was not liable for any lease payments that it did not appropriate. Thus, the Town was only at risk for the amount it budgeted for the lease payments each year. However, Town officials understood that the Town's failure to appropriate funds for the lease payments would likely have an adverse effect on its future credit rating if there was a default.

The Town Board supported the Project and believed that it would provide benefits to the Town in the form of increased cultural and recreational opportunities and economic growth. Due to the Town Board's commitment to the Project, it approved various actions to facilitate the Project's success. Legal constraints limit what towns may do to stimulate economic development, however, and certain actions taken by the Town Board exceeded its legal authority.

The Town Board lacked legal authority to transfer real property to the CLDC without receiving substantial or valuable consideration in return. In April 1999, the Town Board donated the 100 acres of land to the CLDC. The New York State Constitution explicitly states that “no county, city, town, village or school district shall give or loan any money or property to or in aid of any individual or private corporation or association or private undertaking” Although the Not-For Profit Corporation Law permits a town to “sell or lease” unneeded real property to a local development corporation, without appraisal, public notice, or public bidding, this statute can not be read as authorizing a town to give real property to a local development corporation in violation of the Constitution. Thus, even though the Town Board determined that the land was not needed for any Town purpose it could not have simply given the land to the CLDC without receiving substantial and valuable consideration in return.

Section 64(2) of Town Law also provides that a town may acquire by lease, lands or rights in land that are required for any public purpose. Similarly, Section 220(3) of Town Law provides that a Town Board subject to permissive referendum may lease necessary buildings for town purposes. The Town Board did not lease the recreation center because the facility was needed for any public purpose. That is evident by the fact that the Town simultaneously subleased the center back to the CLDC. The Board entered into the lease agreement to facilitate the sale of CLDC bonds. Because the Town leased the recreation center simply to provide backing for the bonds, the Town lacked authority to enter into the lease. The willingness of Town officials to accept the lease/sublease proposal enabled CLDC officials to go ahead with a risky business plan.

Had Town officials strictly complied with the existing statutes, the Project may not have proceeded in the manner that it did and the Town might not have suffered the loss of the land, the loss of \$246,929, subsequent litigation costs, and the downgrading of the Town’s credit rating.

Recommendation

1. When considering the commitment of Town funds or resources for economic development Projects, Town officials should ensure that their actions comply with all applicable statutes.

Recreation Center Financing Plan

Town officials did not exercise appropriate caution and due diligence before committing the Town to backing \$15.25 million of bonds issued by the CLDC to build a recreation center as part of the Project. We found no evidence that the Town Board received detailed, complete, and current information about the Project's financial plan from the CLDC. The Town Board did not retain any independent experts to help it evaluate the risks associated with the Project's key revenue assumptions. Furthermore, some of the risks associated with the financing plan should have been obvious and should have caused all Town Board members to question the credibility of the CLDC proposal and proceed more cautiously. Instead, a majority of the Town Board simply accepted the CLDC revenue projections and verbal assurances from proponents of the Project that the financial plans were sound and that the Project would ultimately generate over \$1 million of net profits annually to fund the debt service on the bonds.

Town Board's Evaluation of the Financial Plan

The Town Board held three key votes on the lease/sublease agreements. At each of these votes, two of the five Town Board members strongly opposed the approval of the agreements. They believed that the agreements placed the Town's credit rating at risk and that they had not received sufficient information to properly evaluate the proposal.

- October 2, 2000 - the Town Board authorized preparation of the written lease and sublease agreements.
- December 21, 2000 - the Town Board authorized execution of the agreements.
- April 13, 2001 - the Town Board reauthorized execution of the agreements in a form demanded by the SEC for the bond issue.

The lease/sublease agreements were formally executed on May 1, 2001 and the bond closing occurred the following month.

The Town Board did not undertake a thorough and systematic evaluation of the CLDC's business plan prior to voting to approve the execution of the lease/sublease agreements. It is unclear what, if any, specific financial projections Town officials reviewed prior to the votes. The minutes of the Town Board did not include substantive discussion of or information supporting the reasonableness of the CLDC revenue projections.

We reviewed all records, documents and other information made available to us by the Town, the CLDC and the MDA. We found no evidence of a comprehensive, detailed and supported financial plan for the Project. Evidence suggests that some or all of the Town Board members attended CLDC board meetings where financial plans were discussed; however, we could not determine exactly what financial information may have been presented on those occasions. Although a profitability study on the proposed ice rink was made available to Town Board members by the CLDC, we noted that the anticipated revenues stream from the rink operation was less than 40 percent of the estimated total Project revenues.

Our review of Town records identified copies of various pro forma cash flow statements prepared by the developer prior to the execution of the lease/sublease agreement. The statements were prepared for the CLDC board, potential investors, and an investment rating company. The statements were not addressed specifically to the Town Board and there was no record indicating which Town Board members received the statements. We did not find any written support for some of the key estimates and assumptions contained in the statements. The total proposed CLDC borrowing for the Project increased by 39 percent from \$11.9 on September 12, 2000, to \$16.6 million on June 14, 2001, the bond closing date.

The Town Board relied on the Town attorney to represent its legal interests in negotiations with CLDC; however, despite the complexity and magnitude of the overall Project and the Town's potential financial commitment, it did not engage any other experts or specialists to review and assess the CLDC plan for the Project or the major underlying assumptions. Engaging experts or specialists for this purpose might have identified the deficiencies in the CLDC's plan and caused the Town Board to reconsider its support for the project.

Risks Associated With the Proposed Project

The development team hired by the CLDC presented optimistic proposals to the CLDC, the Town Board, the general public, and prospective investors in the Project debt issue. Using only the donated land and \$3.2 million in State grants, the CLDC proposed to develop a self-supporting recreation center that would not require financial support from the Town. However, we noted the following facts that should have raised concern about the objectivity of the representations being made about the financing proposal.

- CLDC representatives advised the Town Board that the Project financing would demand a prohibitively high rate of interest without the Town's backing of the debt. Also the CLDC sought a line of credit financing from a major bank that had expressed initial interest in the Project; however, bank officials ultimately declined the loan.

These facts strongly suggest that the Project was viewed as risky by financial markets and should have been regarded as such by Town officials.

- The CLDC's projections indicated that the anticipated profits from the recreation center would not be sufficient to fund the proposed debt service during the initial years of operation. The projections included an estimated \$1 million of net profits from the sale or lease of other sections of the land not used for the recreation center during the first three years. Although recreation center profits were projected to increase rapidly, the short-term real estate revenue was critical to the financing plan. Despite the importance of this revenue, the CLDC never provided Town officials with a specific plan to raise the real estate revenue and it did not have any lease or sales commitments for the land. A real estate appraisal firm had appraised the potential commercial lease value of the remaining land at \$267,000 per year and had appraised the potential commercial sales value at \$3,143,000 after infrastructure (roads, sewers, water, etc.) was installed. There were no independent land appraisals for the proposed residential development. Thus, the Town had little assurance that the lease and sale of property would provide enough revenue to contribute in a significant way to paying off the CLDC bonds. Annual debt service on the Series A bonds was scheduled to average over \$1.1 million a year and total over \$45.9 million over the 40 year term.
- The Town Board and the CLDC board relied entirely on financing plans and projections prepared by various firms hired by the CLDC. However, these firms all had a direct short-term financial interest in getting Project funding and no equity at risk for the Project's long-term outcome. During the planning of the Project, the CLDC had no money to pay for contractor services. Consequently, the payment for the planning work done by the developer, builder and bond attorneys was to be made from the proceeds of the recreation center bonds. The existence of these types of compensation arrangements with the Project development team should have raised concern about the objectivity and credibility of their financial projections and the risks for overspending and/or imprudent borrowing. For example, the total development fee paid to the developer was based on approximately 18 percent of the total development cost including the land value, the State grants, and the total amount ultimately borrowed for the Project. That \$3.1 million development fee was subsequently reduced by an Internal Revenue Service determination that a substantial portion was an excess benefit transaction. That resulted in the cancellation of the Series B bonds to preserve the tax exempt status of the rest of the issue (Series A).

- Finally, a recreation management firm did a feasibility study of the proposed ice rink operation which presented very favorable profit projections. Although we noted that this firm was paid by the MDF from state grant funds, the firm should not have been considered independent by the Town Board because the developer had selected the firm to do the study and, at the same meeting that the firm was approved to do the study, the CLDC approved an exclusive contract for this firm to manage the proposed ice rinks facility if it was built. In its study, the firm initially projected net profits before debt service and depreciation of \$149,114 and \$249,575 in the first two years of operation. It later revised the projections increasing the estimated net profits to \$227,804 and \$356,645 for the two years. We noted that the ice rinks actually lost \$135,523 in the first year of operation, 2001-02, and only made a profit before debt service and depreciation of \$31,190 in the second year, 2002-03.

The Town Board's Responsibility

The lease/sublease agreements with the CLDC effectively placed the Town's financial resources and/or good credit rating at risk by linking them to the financial success of the recreation center financing plan. Accordingly, the members of the Town Board had an implicit responsibility to proceed cautiously and safeguard the Town's interests by diligently evaluating all aspects of the financing plans. At a minimum, the Town Board should have required complete and detailed written disclosure of all aspects of the financial plans and ongoing notification and updates about all changes. The Town Board should have demonstrated reasonable skepticism about the credibility of the financial plans given the poor risk rating for the Project's bonds and the conflicting self-interest of the Project's primary promoters. Finally, the Town Board should have recognized that they and the CLDC board lacked prior development experience for a Project of this magnitude and should have engaged independent experts for assistance in evaluating this complex financing plan.

Although two of the five members of the Town Board eventually opposed the Town's involvement in the Project, all members told us that they initially approved and supported the type of development being proposed and believed that it would provide many benefits to the Town. We believe that the enthusiasm and high expectations for the Project may have contributed to some Town officials ignoring the significant warning signs that should have caused them to proceed more cautiously. Those members of the Board that continued to support the Project told us they relied on the fact that the CLDC had hired professional firms to provide expert guidance and noted that the former Office of the New York State Assembly Majority Leader had played a significant leadership role and provided support for the Project. Finally, Town officials were consistently assured by the CLDC development team that it was extremely unlikely that taxpayers would ever be called upon to make good on the debt guarantee.

Recommendation

2. Town officials should, prior to making any agreement, diligently evaluate any proposed financial agreements that could obligate the Town to making future expenditures or that could jeopardize its credit rating. An appropriate level of due diligence includes:
 - Obtaining complete and detailed written disclosure for all financial proposals
 - Clearly identifying and assessing the risks in any financial plans including the risks that key financial information in the plans may not be objective or reliable
 - Engaging qualified, independent professionals to assist in evaluating financial risks for complex and significant proposals.

Monitoring of CLDC Financial Performance

The lease and sublease agreements with the CLDC exposed the Town to financial risk. In order to effectively manage that risk, the Town Board should have implemented procedures that would have allowed the Town Board to remain informed about the CLDC's financial condition. However, Town officials did not adequately monitor the CLDC's fiscal performance after entering into the agreements and, as a result, they were not aware of the CLDC's serious fiscal problems until Town funds had been placed in jeopardy.

The level of financial risk to the Town was directly related to the Board's willingness to appropriate moneys for the recreation center lease payments and the fiscal condition of the CLDC. Any deterioration in the finances of the CLDC and its ability to meet its debt obligation increased the risk that the Town would be obligated to expend all or part of any amount it appropriated for that purpose. The Town's budgets for 2002 and 2003 each included a lease appropriation of \$1,026,013, the full amount of the annual debt service on the CLDC bonds. Given the magnitude of this potential liability, it was imperative that Town officials remained well informed about the CLDC's financial affairs including the operational results of the recreation center, the level of other anticipated revenues earned (e.g. land sales and leases by the GCLDC) and the CLDC's cash balances (e.g. debt reserve account). It was essential that the Town Board have such information when it considered the appropriation of funds for the CLDC bonds.

Provisions of the sublease agreement gave the Town the right to obtain essential financial information from the CLDC to allow the Town to make informed decisions. According to the agreement, the CLDC was required to provide the Town with audited annual financial statements within 120 days after the close of the CLDC's fiscal year, an annual operating budget no later than 45 days prior to the upcoming fiscal year and monthly operating statements within 45 days after the close of each month.

The CLDC's audited financial statements for the year ended August 31, 2002 were not received by the Town Supervisor until February 12, 2003. The auditors' report disclosed that CLDC expenses exceeded revenues by \$811,201 during the 2001-02 fiscal year and that liabilities exceeded assets by over \$650,000 at August 31, 2002. They also reported that the CLDC had only \$95,000 in total unrestricted cash at that date. They warned that "these conditions raise substantial doubt about the Corporation's ability to continue as a going concern." Their report clearly discloses poor fiscal performance during the 2001-02 year as well as the precarious state of CLDC finances as the 2002-03 fiscal year began.

The CLDC's financial records for 2002-03 show that operating results were well below projections generating just \$19,266 in net income (before debt service and depreciation) from the total combined operations of the ice rinks, the YMCA program and the CLDC's general operations. No revenue was recorded from the lease or sale of real property.

Although we found some monthly operating statements for the 2002-03 and 2003-04 fiscal years on file at the Town, former and current Town officials indicated that monthly reports from the CLDC had not always been received. We found no monthly statements for 2001-02. A written demand to the CLDC for the monthly operating statements was made by the Town attorney on January 30, 2003. In that letter, the Town attorney stated that the Town had received no monthly statements since the lease/sublease agreements had been entered into in May 2001. She also requested the CLDC's annual operating budget and the 2001-02 audited financial statements stating that these too had not yet been received by the Town.

Based on our review of available records and documents and discussions with former and current Town officials, we did not find any evidence that the Town had requested monthly operating statements from the CLDC or any similar financial information until early 2003. The Town Board failed to assert its rights of access to fiscal information it needed to remain informed about the CLDC's operations and the condition of its finances for 19 months. Had Town officials taken steps to exercise the Town's right for this information sooner, they would have realized the seriousness of the financial problems facing the CLDC and may have elected not to appropriate an amount in the 2003 budget for its lease payments. Consequently, the Town Board's uninformed decision to appropriate funds for the 2003 lease payments carried with it serious risks that ultimately led to the expenditure of \$246,929 to cover the November 2003 bond interest payment.

The agreement executed with respect to the CLDC bonds contained provisions granting the Town authority to inspect "all records, accounts and data" of the CLDC relating to the Project. According to the agreement, the Town retained this right for as long as any bonds remained outstanding. We found no indication, however, that Town officials or employees ever performed such an inspection. Review of the CLDC's records might also have alerted the Town much earlier to the CLDC's growing inability to generate sufficient revenues to pay the bonds.

Recommendation

3. Whenever the financial interests of the Town are linked to the fiscal performance of another governmental, public, or private entity, Town officials should implement appropriate monitoring procedures to stay informed about the financial condition of that entity.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

The local officials' response to this audit can be found on the following page.

The Town of Cicero response letter makes reference to several attachments that support the response letter. Because the Town's response letter provides sufficient detail of its actions, we did not include the attachments in Appendix A.

Town Council
Donald J. Brodhead
James E. Corl, Jr.
Charlotte Tarwacki
Thomas C. Schunck

Receiver of Taxes
Sharon M. Edick
(315) 699-2756
Fax (315) 699-9562

Supervisor
Chester A. Dudzinski, Jr.
(315) 699-1414



Town Clerk
Tracy M. Cosilmon
(315) 699-8109

Highway Superintendent
Christopher J. Woznica
(315) 699-2745
Fax (315) 699-2746

Town Justices
Robert S. Walczyk, Jr.
Carl T. Putzer
(315) 699-8478
Fax (315) 699-7017

TOWN OF CICERO

COUNTY OF ONONDAGA

P.O. BOX 1517, CICERO, NEW YORK 13039-1517 • FAX 315-699-0039 • e-mail: supervisor@cnyemail.com

April 12, 2005

██████████ Chief Examiner
Office of the State Comptroller
State Office Building, Room 409
333 East Washington Street
Syracuse, New York 13202

**Re: Town of Cicero
Cicero Commons Project**

Dear ██████████

Please accept this letter as the response of Town Board of the Town of Cicero (the "Board" or the "Town") to the audit conducted by the New York State Comptroller's Office on the Town of Cicero – Cicero Commons Project. The Board has reviewed the draft report and wishes to add the following comments to the final report.

Town Exceeded its Legal Authority

The report states that "[t]he Town Board lacked legal authority to transfer real property to the CLDC without receiving substantial or valuable consideration in return." The Board wishes to stress that it transferred the property to the CLDC *only upon advice of legal counsel*. Attached as Exhibit A are the Town Board minutes from April 12, 1999, in which the Board is told by the then town attorney Anthony Rivizzigno that, "the not-for-profit corporation law authorizes the town board, by resolution, subject to a public hearing, to transfer land to the Local Development Corporation." The Board relied on the advice given to it by Attorney Rivizzigno that it was legal for the Town to transfer the property in the manner it did.

Recreation Center Financing Plan
Town Board's Evaluation of the Financial Plan

There were three "key votes" on the Project highlighted in the report. The report states that "[a]t each of these votes, two of the five Town Board members strongly opposed the approval of the agreements. They believed that the agreements placed the Town's credit rating at risk and that they had not received sufficient information to properly evaluate the proposal." Those two Board members, current Supervisor Chester A. Dudzinski, Jr. (the "Current Supervisor"), and current Member Thomas Schunck (the "Current Member"), not only voiced their opposition to the project, but also attempted to persuade their fellow Board members to reconsider moving forward.

At the October 2, 2000 meeting the Current Supervisor and Current Member repeatedly made comments stressing that there was a risk that Town taxpayers would be called upon to support bond payments. Below are relevant portions of the minutes of the October 2, 2000 meeting. These minutes are also attached as Exhibit B. Please note that omissions are marked with three asterisks (***) , and that any transcription errors are contained in the minutes themselves. Additional emphasis is shown in italics, and minor alterations to the text are in brackets.

AT PAGE 7:

DEVELOPER: THERE IS A RESOLUTION BEFORE YOU. IN JULY AND DECEMBER THERE ARE PAYMENTS OF BOND INTEREST AND PRINCIPAL TO BE MADE. IF THE REVENUES THAT HAVE BEEN GENERATED BY THE OPERATIONS ARE SHORT, THE TOWN WILL MAKE UP THAT DIFFERENCE PAYMENT.

CURRENT SUPERVISOR: WHICH IN TURN MEANS I HAVE TO GO TO THE TAXPAYERS OF THE TOWN.

DEVELOPER: NOT NECESSARILY.

CURRENT SUPERVISOR: WHERE DO I GET THE MONEY FROM?

DEVELOPER: FIRST OF ALL YOU, WILL SEE THAT WE ARE GENERATING POSITIVE CASH FLOW FROM THE FIRST YEAR. IF THE RESERVES WERE NOT ENOUGH, THE LDC WOULD MAKE THAT PAYMENT.

CURRENT SUPERVISOR: THEN YOU ARE ASKING ME TO GIVE YOU THE MONEY WE GET FROM THE TAXPAYERS.

DEVELOPER: IF THAT WOULD HAPPEN.

CURRENT SUPERVISOR: IT'S A YES OR NO ANSWER.

[THE FORMER SUPERVISOR] ASKED [THE DEVELOPER] TO CONTINUE WITH HIS PRESENTATION SO THAT THE QUESTIONS CAN BE ANSWERED.

AT PAGE 12:

[THE CURRENT MEMBER] ASKED [THE DEVELOPER] IF WHAT HE WAS SAYING, WAS, THAT IF IN A WORSE CASE SCENARIO THE TOWN OF CICERO WOULD HAVE TO PAY THE BILL?

DEVELOPER: YES.

CURRENT MEMBER: *YOU ARE TELLING EVERYONE SITTING HERE TONIGHT THAT THERE IS A RISK TO THE TOWN OF CICERO TAXPAYER.* IS THAT CORRECT?

DEVELOPER: YES.

AT PAGE 16:

CURRENT SUPERVISOR: I BELIEVE THE BOTTOM LINE IS THAT IF THERE ISN'T SUFFICIENT FUNDS THIS WILL FALL BACK ON THE TOWN OF CICERO TAXPAYERS.

CLDC BOND COUNSEL: THAT IS CORRECT. IT IS YOUR DECISION TO APPROPRIATE OR NOT APPROPRIATE. IF YOU DON'T IT WILL AFFECT YOUR CREDIT RATING AND THAT IS THE RISK.

CURRENT SUPERVISOR: THAT WOULD BE BORNE BY THE TAXPAYERS.

CLDC BOND COUNSEL: YES.

CURRENT MEMBER: EVERYONE HAS A CRYSTAL BALL HERE TONIGHT BUT ME. MY CRYSTAL BALL DOESN'T SEE ANYTHING. I AM VERY SUPPORTIVE OF THIS PROJECT, BUT MY PROBLEM FROM DAY ONE IS, THAT I SAID I WOULD SEPARATE FROM THIS PROJECT WHEN IT BECAME A COST BURDEN TO THE TOWN OF CICERO. THIS HAS NOT BEEN THE WAY IT HAS BEEN PROPOSED AND *CREATES A LOT OF IFS.* I KNOW YOU SAY YOU HAVE CONTRACTS, BUT THERE IS NOTHING BEFORE THIS BOARD *AND NOTHING IS GUARANTEED.*

CURRENT SUPERVISOR: THIS IS AN IMPORTANT ISSUE THAT EVERYONE SHOULD HAVE BEEN ABLE TO HEAR. I ASKED THIS QUESTION EARLIER AND DIDN'T GET AN ANSWER TO THIS UNTIL NOW.

CURRENT MEMBER: I ASKED THE SAME QUESTION EARLIER, THERE IS A RISK TO OUR COMMUNITY.

AT PAGE 19:

THE RESOLUTION WAS DULY ADOPTED BY A VOTE AS FOLLOWS:

CURRENT MEMBER: NO. *** I MADE IT CLEAR WHEN I TOOK OFFICE I WOULD VACATE THIS IDEA SHOULD IT BECOME A BURDEN TO THE TAXPAYER. UNDER THIS CURRENT FINANCIAL SITUATION I AM VOTING NO AND HOPE WE DON'T END UP IN A BAD FINANCIAL SITUATION.

CURRENT SUPERVISOR: NO. WHEN I TOOK OFFICE 7 YEARS AGO, I FELT I HAD A RESPONSIBILITY TO THE TAXPAYERS OF THE TOWN OF CICERO. I AM NOT COMFORTABLE WITH THIS. I MAY BE TOO CONSERVATIVE BUT I DO NOT BELIEVE IN IT.

When it came time to vote on the lease agreement, the Current Supervisor and Current Member both voted no. Both were concerned that the project would eventually become a burden on Town taxpayers. The Current Member speaks to those who voted in favor of the Project when he states "you are telling everyone sitting here tonight that there is a risk to the Town of Cicero Taxpayer." It is clear from his comments that he was attempting to stress the financial implications of the Project to other Board members, as well as to point out that much of the discussion in favor of the project was speculative ("a lot of ifs" and "nothing is guaranteed").

At the April 13, 2001 meeting the Board was called upon to reauthorize execution of the lease agreement in a form demanded by the SEC for the bond issues. Discussion at this meeting centered on the lack of information necessary to make an informed decision. The following are relevant excerpts from those minutes, which are attached as Exhibit C. The same reference information detailed above also applies to this transcription.

AT PAGE 3:

CURRENT MEMBER: *** I WENT TO THE CLDC MEETING AND I ASKED THE CHAIRMAN IF THEY WOULD HIRE AND PAY FOR A CONSULTANT OF OUR CHOICE TO LOOK AT THE FEASIBILITY STUDY TO SEE IF IT'S WORTH IT. THEY REJECTED THE IDEA. *** I HAVEN'T RECEIVED A FEASIBILITY STUDY UPDATE OR ANYTHING NOR DO I KNOW OF ANY THAT YOU HAVE GOTTEN AND I DO NOT KNOW HOW ANYBODY CAN MAKE A VOTE ON THIS MUCH MONEY THAT COULD EFFECT THE COMMUNITY WITHOUT SOME TYPE OF DOCUMENT SUPPORTING IT.

CURRENT MEMBER: *** WE HAVE NO NEW INFORMATION NO FEASIBILITY STUDY NO SPREAD SHEETS SHOW HOW THIS THING CAN BE VIABLE. THEY SHOWED IT AT \$10.5 MILLION TO BE VIABLE. I RECEIVED THREE CALLS FROM PROFESSIONALS IN THE FIELD THAT SAID IT WOULD NOT HOLD ITS WATER. SO MY QUESTION NOW IS AT \$15.5 MILLION WHY IS THIS PROJECT \$5 MILLION DOLLARS MORE *WITH NO FEASIBILITY STUDY FOR US TO LOOK AT AND HOW CAN YOU MAKE A DECISION OR VOTE FOR THIS PROJECT.*

AT PAGE 4-5:

CURRENT MEMBER: I HAVE RECEIVED TWO PHONE CALLS FROM BUFFALO AND ONE FROM ROCHESTER FROM TWO PEOPLE WHO WERE ORIGINALLY PART OF THIS PROJECT AND WHO WERE REMOVED FROM IT. THE OTHER CALL WAS FROM A CONSULTANT IN ICE RINKS. I TALKED TO HIM OVER THE PHONE AND GAVE HIM INFORMATION OFF THAT ORIGINAL FEASIBILITY STUDY. THESE PEOPLE ARE AFFILIATED WITH THE AMHERST PEPSI ARENA WHICH HAS THREE RINKS AND JUST ONE FIGURE THAT SCARED ME THE MOST WAS WHERE THEY WERE DISCUSSING THE UTILITIES. THE ORIGINAL FEASIBILITY STUDY SHOWED A NUMBER OF \$230,000 FOR UTILITIES AND THEIR COST WAS OVER A HALF A MILLION DOLLARS, WHICH WAS AT THE COST PRIOR TO OUR 30 PERCENT INCREASE THIS YEAR. THAT IS ONLY ONE NUMBER ON THAT FEASIBILITY STUDY THAT SCARED ME.

CURRENT MEMBER: THAT IS A 50 PERCENT INCREASE OVER THE ORIGINAL AND YOU HAVE NO FEASIBILITY STUDY.

DEVELOPER: THE PROJECT DIDN'T INCREASE 50 PERCENT WITHOUT ANY CHANGE AND THERE ARE THINGS THAT BACK UP THE CHARGE SUCH AS ADDITIONAL SERVICES AVAILABLE TO THE COMMUNITY.

CURRENT MEMBER: I AM NOT WORRIED ABOUT SERVICES BUT I AM WORRIED ABOUT REVENUES.

DEVELOPER: THEY ARE GOING TO BE FUNDED BY THE USER FEES JUST LIKE THE REST OF IT.

CURRENT MEMBER: HOW LONG IS THIS BONDING FOR?

FORMER TOWN ATTORNEY: FORTY YEARS.

[THE CURRENT MEMBER] STATED THAT AT THE END OF THIS TIME FOUR OUT OF FIVE OF THE BOARD MEMBERS WILL BE DEAD. OUR CHILDREN'S CHILDREN ARE GOING TO BE RUNNING THIS TOWN BOARD AND THEY ARE GOING TO BE WONDERING WHAT WE WERE DOING. MY POINT IS THAT YOU HAVE INFORMATION FOR THE FIRST PROJECT AT \$5 MILLION DOLLARS LESS THAT WAS SKEPTICAL AT BEST. YOU ARE NOW TALKING ABOUT \$15.5 MILLION DOLLARS. IT IS NOT TOO LATE TO SEND THIS BACK TO THE DRAWING BOARD.

FORMER SUPERVISOR: YES IT IS WAY TOO LATE TO SEND IT BACK TO THE DRAWING BOARD.

CURRENT MEMBER: NO IT IS NOT. YOU HAVE A FOUNDATION UP THERE.

FORMER SUPERVISOR: WHY DIDN'T YOU COME TO ANY ONE OF US AS WE COULD HAVE HAD EVERY EXPERT AT THIS MEETING.

CURRENT MEMBER: WHAT DO YOU MEAN EXPERT?

FORMER SUPERVISOR: WE COULD HAVE HAD THE DEVELOPER FROM NEW YORK.

CURRENT MEMBER: THEY DON'T HAVE A FEASIBILITY STUDY FOR YOU.

FORMER TOWN ATTORNEY: YES THEY DO.

CURRENT MEMBER: THEY DO?

FORMER SUPERVISOR: NOW YOU ARE BRINGING THIS TO US AT QUARTER AFTER SIX.

CURRENT MEMBER: NO, I ASKED FOR THIS TWICE. I ASKED FOR THIS FROM *** THE CHAIRMAN OF THE CLDC.

FORMER SUPERVISOR: WHEN?

CURRENT MEMBER: TWO MEETINGS AGO WHEN WE WENT DOWN CITY I ASKED HIM FOR AN INDEPENDENT STUDY OF THE ORIGINAL ONE.

AT PAGE 8:

[THE CURRENT MEMBER] ASKED IF HE COULD GET A COPY OF THE FEASIBILITY STUDY?

FORMER TOWN ATTORNEY: I DON'T HAVE ONE WITH ME, BUT I CAN GET ONE TO YOU.

CURRENT MEMBER: I THINK WE WOULD ALL LIKE A COPY.

FORMER BOARD MEMBER: I THINK I HAVE A COPY. I'M SURE I'VE SEEN IT.

FORMER SUPERVISOR: I HAVE ONE.

CURRENT MEMBER: YOU HAVE A COPY OF THE FEASIBILITY STUDY THAT SUPPORTS THE \$15.5 MILLION. WHY DO YOU THREE HAVE IT AND WE DON'T?

FORMER BOARD MEMBER: I ASKED FOR IT.

CURRENT MEMBER: WHAT IS THAT, NO WONDER I'M FRUSTRATED. I'M SERIOUS IF YOU HAVE INFORMATION THAT I DON'T HAVE, WHY IS THAT?

AT PAGE 9:

CURRENT MEMBER: I WOULD LIKE A COPY OF THE FEASIBILITY STUDY IF SOMEONE WOULD BE KIND ENOUGH TO SHARE IT WITH ME. IN THE FUTURE, AND I WILL SAY IT AGAIN, I WISH A COPY OF ANYTHING PERTINENT TO THE COMMUNITY CAMPUS PROJECT *SO THAT I CAN BE INFORMED TO MAKE EDUCATED DECISIONS I WOULD LIKE A COPY OF EVERYTHING.*

THE RESOLUTION WAS ADOPTED AS FOLLOWS:

FORMER MEMBER: YES.

CURRENT MEMBER: NO.

CURRENT SUPERVISOR: NO. I WOULD ALSO LIKE TO COMMENT THAT IN THE FUTURE I WOULD LIKE ANY KIND OF INFORMATION THAT PERTAINS TO THE PROJECT AND THAT IS THE REASON WHY I'M VOTING NOT BECAUSE OF THE SAME SITUATION THAT WE HAVE HAD BEFORE. THERE ARE A LOT OF CONCERNED CITIZENS OUT THERE IN THE TOWN OF CICERO AND THEY DON'T REALLY BELIEVE THAT THEY WANT TO HOLD THESE BONDS IF THEY DO FAIL THEY WILL BE THE RESPONSIBILITY OF THE TOWN OF CICERO TAXPAYER.

Both the Current Supervisor and the Current Member voted against re-execution, as they believed that an independent feasibility study was necessary in order to make an informed decision. The Current Member states twice that he cannot understand how others can make an informed decision on the Project without adequate documentation, and states that he needs it himself in order to make an “informed decision.” There were members of the Board who recognized the need for due diligence when making decisions.

The Board would also like to stress that during the above decision-making process, as noted in the report, the Board “relied on the Town attorney to represent its legal interests in negotiations with the CLDC.” The report then suggests that the Board should have engaged additional experts or specialists to review Project plans. It is clear from the statements made by the Current Supervisor and Current Member who consistently voted against the Project that they understood the need for such expertise. Those members voted against the Project precisely because they did not have sufficient expert opinions on its economic feasibility.

Risks Associated with the Proposed Project

The Board would like to again note that the Current Supervisor and Current Member were very aware of the risks associated with the Project, and that they repeatedly voiced those concerns to fellow Board members and the public. With respect to the feasibility study for the proposed ice rink, the Town would again state that these two members recognized a need for an independent feasibility study, and in fact argued that one was necessary in order to determine whether or not the Project should move forward.

The Town Board’s Responsibility

The Town acknowledges that three out of the five Board members at the time ignored certain warning signs. However, there were two Board members, who sit on the current Board, who did not ignore the warning signs.

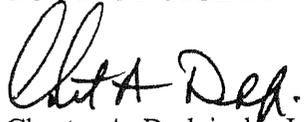
Monitoring of CLDC Financial Performance

The Town believes it was not adequately advised as to the extent and nature of CLDC’s financial reporting obligations. The Board relied on legal counsel to help interpret and enforce provisions in the Sublease Agreement. While the Town recognizes that it is responsible for understanding and staying abreast of obligations under the Sublease Agreement, the Town would suggest that is also the obligation of legal counsel to assist in this process, and that the Town relied on legal counsel to so assist. Attached as Exhibit D is a copy of the letter referenced in the report, in which current legal counsel, upon becoming the Town’s attorneys, demanded that the CLDC supply the required financial reports.

In conclusion, the Town is fully aware of the many mistakes made during the negotiation and approval of the Cicero Commons Project. The Town believes that recognition of these issues is the first step towards ensuring that such mistakes will not be made in the future. All current Board members are cognizant of the risks involved in complex financial transactions, and will endeavor to fully investigate and understand any future transaction before committing the Town to it.

Yours very truly,

TOWN OF CICERO


Chester A. Dudzinski, Jr.
Town Supervisor

Attachments

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

Our audit included the following procedures to achieve our stated audit objectives:

- We interviewed former and current officials of the Town of Cicero, the former chairman of the CLDC and GCLDC and the current Chairman of the CLDC. We also interviewed MDA personnel and the current manager of the Cicero Commons recreation center.
- We held discussions with representatives of the NYS Department of Transportation and the Empire State Development Corporation.
- We reviewed financial records and reports, budgets, Project documents, studies, contracts and agreements and correspondence related to the Project made available to us by the Town, the CLDC and the MDA. The Project documents we reviewed included Project plans, pro forma cash flow statements and other information prepared by the Project's developer.
- We compared the developer's net profit Projections for the Project with the actual results of the recreation center and the other Project revenue sources.
- We reviewed legal papers filed with the County Clerk in connection with the lawsuits brought by the Town and foreclosure proceedings initiated by the bond trustee on behalf of the CLDC bondholders.
- We reviewed the minutes of the proceedings of the Town Board during the audit period and also reviewed the minutes of the CLDC and the GCLDC. (However, we could not ascertain whether the minutes provided by the CLDC and GCLDC represented the complete record of all meetings of the corporations during the period).

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. Such standards require that we plan and conduct our audit to adequately assess those municipal operations within our audit scope. Further, those standards require that we understand the municipality's management controls and those laws, rules and regulations that are relevant to the municipality's operations included in our scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in accounting and operating records and applying such other auditing procedures, as we consider necessary in the circumstances. We believe that our audit provides a reasonable basis for the findings, conclusions and recommendations contained in this report.

APPENDIX C

LOCAL DEVELOPMENT CORPORATIONS

Local Development Corporations (LDC's) are not-for-profit corporations created for the charitable or public purposes of stimulating economic growth, expanding job opportunities and reducing unemployment in the communities in which they exist. Their efforts may include attracting new industries to the community, retaining existing businesses and training individuals to improve job skills. LDC's have been given broad and independent powers under the governing statutes. These powers in some respects equal or exceed those of local governments. For example, LDC's may construct, acquire, rehabilitate and improve industrial or manufacturing plants for use by others (e.g. private companies), or provide financial assistance to others to do so. LDC's are authorized to acquire real or personal property by purchase, gift or lease and may sell, lease, mortgage or otherwise dispose of property and other assets. They may also borrow money and issue negotiable bonds, notes and other obligations.

Unimpeded by many of the statutory constraints imposed on municipalities, LDC's are able to operate with much more administrative flexibility than local governments. For instance, LDC's are not subject to bidding statutes and are not obligated to seek competition when procuring goods and services. Additionally, they are not bound by the provisions of Local Finance Law that place various restrictions on local governments such as limitations on the maturity of debt obligations and referendum requirements. Unlike local governments, LDC's do not have constitutional debt limits and they are permitted to issue revenue bonds (secured by future revenues) to finance Projects and improvements.

State law allows LDC's to function with considerable autonomy. Local governments and the public exert little control over LDC's and they generally have minimal input into the decision making process of these entities.

APPENDIX D

SUMMARY OF THE PROJECT'S BUDGET

<u>Budgeted Sources of Project Funds</u>	
Series A bonds (secured)	\$15,250,000
Series B bonds (unsecured)	1,215,000
Project earnings	185,313
NYS Grants	3,190,000
<hr/>	<hr/>
Total Budgeted Sources of Funds	<u>\$19,840,313</u>
 <u>Budgeted Uses of Project Funds</u>	
Infrastructure Construction	\$2,690,000
Recreation Center	10,105,000
Developer fee	3,062,714
Start-Up Debt Service and Working Capital	1,626,636
Other Costs	1,217,238
Debt Service Reserve Fund	1,138,725
<hr/>	<hr/>
Total Budgeted Uses of Funds	<u>\$19,840,313</u>

Note: This budget does not include the value of land donated by the Town to the CLDC.

APPENDIX E

HOW TO OBTAIN ADDITIONAL COPIES OF THE REPORT

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APPENDIX F

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Mark P. Pattison, Deputy Comptroller
Steven J. Hancox, Assistant Comptroller
John Clarkson, Assistant Comptroller

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Robert Meller, Chief Examiner
Office of the State Comptroller
295 Main Street - Room 1050
Buffalo, New York 14203
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Email: Muni-Buffalo@osc.state.ny.us

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State Office Building, Room 409
333 East Washington Street
Syracuse, New York 13202
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Office of the State Comptroller
NYS Office Building, Room 3A10
Veteran's Memorial Highway
Hauppauge, New York 11788-5533
(631) 952-6534 Fax (631) 952-6530
Email: Muni-Hauppauge@osc.state.ny.us

Nassau, Suffolk

ROCHESTER REGIONAL OFFICE

Edward V. Grant, Chief Examiner
Office of the State Comptroller
The Powers Building
16 West Main Street - Suite 522
Rochester, New York 14614
(585) 454-2460 Fax (585) 454-3545
Email: Muni-Rochester@osc.state.ny.us

Cayuga, Chemung, Livingston, Monroe, Ontario,
Schuyler, Seneca, Steuben, Wayne, Yates

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Office of the State Comptroller
State Office Building, Room 1702
44 Hawley Street
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(607) 721-8306 Fax (607) 721-8313
Email: Muni-Binghamton@osc.state.ny.us

Broome, Chenango, Cortland, Delaware,
Otsego, Schoharie, Sullivan, Tioga, Tompkins

ALBANY REGIONAL OFFICE

Christopher J. Ellis, Principal Examiner
Office of the State Comptroller
22 Computer Drive West
Albany, New York 12205
(518) 438-0093 Fax (518) 438-0367
Email: Muni-Albany@osc.state.ny.us

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