



NASSAU COUNTY LEGISLATURE

Office of Legislative Budget Review

A Report on Rules Committee Hearing: Economic Development Vertical and Related Matters

Economic Development Vertical

County Agencies

Office of Housing & Intergovernmental Affairs (OHIA)	Department of Planning	Office of Minority Affairs	Coordinating Agency for Spanish Americans (CASA)	Human Rights Commission	Nassau County Public Utility Agency (NCPUA)
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Non-County Agencies

Economic Development Corp. (EDC) Non-profit Corp.	Local Development Corp. (LDC) Non-profit Corp.	Industrial Development Agency (IDA) Public Benefit Corp.	Sports Entertainment & Tourism (SET) Non-profit Corp.
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Eric C. Naughton, Director

January 14, 2005

ERIC C. NAUGHTON
DIRECTOR
OFFICE OF LEGISLATIVE
BUDGET REVIEW



NASSAU COUNTY LEGISLATURE
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Inter-Departmental Memo

To: Hon. Judith A. Jacobs, Presiding Officer
Hon. Peter J. Schmitt, Minority Leader
All members of the Nassau County Legislature


From: Eric C. Naughton, Director
Legislative Budget Review

Date: January 14, 2005

Re: A Report on Rules Committee Hearing:
Economic Development Vertical & Related Matters

Enclosed is a copy of the report on the "Economic Development Vertical & Related Matters". It is based on 2,793 pages of transcribed testimony from the eight days of hearings conducted last year, along with any submitted documentation. The report is prefaced by an Executive Summary.

As always, my staff and I remain ready to provide whatever assistance the Legislature may require.

Although the financial magnitude of the problems with the EDV vertical does not compare with what has been alleged with some of the school districts on Long Island and although HUD has reduced the amount that the County must reimburse, the impact on the public trust should not be minimized. The majority of the problems that occurred within the Nassau County Economic Development Vertical (EDV) did not occur because of a lack of rules or a lack of awareness, but because individuals chose to circumvent established practices.

The New York State Office of the State Comptroller, in its “Procurement and Disbursement Guidelines,” (Bulletin No. G-54 May 29, 1986) lists the following as “the main characteristics of internal control”:

- a. Separation of staff duties.
- b. Written procedures of job descriptions, duties, and responsibilities.
- c. Established levels of authorization.
- d. Accurate record keeping.
- e. Procedures for periodic management review and testing to ensure compliance

The EDV violated each of these principles. The special hearing of the Rules Committee and the various investigations into the workings of the Economic Development Vertical demonstrated that existing rules and procedures were ignored. If County rules had been followed, the OHIA credit card and checking account would not have been opened and utilized without the knowledge and oversight of the County Treasurer and Comptroller, and OHIA personal services contract reimbursement would not have been disallowed by HUD. When government works most closely with business interests, and where both County and non-County, both public and private funding sources contribute to projects, it is vital that every “i” is dotted, and every “t” is crossed. Unfortunately this clearly was not the case with the EDV.

At the time that former Deputy County Executive Peter Sylver resigned on November 26, 2003, amidst allegations of the improper use of federal funds, HUD “had already been reviewing some of the issues since earlier in the year through a complaint received by [the] Office of Inspector General Hotline and had been in communication with the County towards resolution of those issues.”¹ The HUD monitoring evaluated Nassau’s Community Development Block Grant transactions and activities. One of the findings was that procurement requirements applicable to local government were not complied with. This should not have been a problem since the basic requirement is that local governments follow their own procurement procedures “which reflect applicable State and local laws and regulations.” (24 CFR § 85.36) Nassau County Comptroller Weitzman stated, “Indeed, most of the vertical was operated as if it were answerable to no one and exempt from County policies and procedures. While we have not uncovered evidence of substantial personal gain by Vertical officials, I will outline for you a pattern of laxity and negligence that was so pervasive within the unit that far worse abuses were possible than those we found.”²

¹ U. S. Department of Housing and Urban Development, New York State Office of Community Planning and Development. *FY 2004 Monitoring Nassau County, New York*, p. 1.

² Nassau County Office of the Comptroller, Field Audit Bureau, “Limited-Scope Financial Review of the Economic Development Vertical”, January 20, 2004, Executive Summary, p. 25-26.

Presiding Officer Jacobs, in a memo dated January 7, 2004, informed the Rules Committee members that a hearing on the Economic Development Vertical would commence on January 21, 2004.

The Rules Committee was not able to elicit testimony from Peter Sylver, who did appear but invoked his Fifth Amendment privilege. For the record, his lawyer, Steven Worth, categorically denied all of the allegations against his client. Some of those allegations, in addition to being outside the scope of the hearings, are serious enough to have drawn the attention of both the Federal Bureau of Investigation and the Nassau County District Attorney.

On July 8, 2004, Nassau County District Attorney Dennis Dillon announced the arrest of Mr. Sylver, on “a felony charge for submitting falsified documents, and misdemeanor charges for official misconduct, coercion, and sexual abuse.”³ *Newsday* reported that Mr. Dillon, during a press conference, “said the charges also end the federal government's criminal probe of Sylver's activities.”⁴ On July 23 Mr. Sylver pleaded guilty to “misdemeanor charges of official misconduct, coercion and second-degree harassment.”⁵ He was sentenced on September 14 to three years probation on the coercion and official misconduct charges, and a one year conditional discharge on the harassment plea. In addition, he paid restitution of \$1,272.

This report presents the findings of the Office of Legislative Budget Review based on the testimonies at the hearings and the submitted documentation. Because the province of the Rules Committee does not include the prosecution of criminal offenses nor the institutions of law suits based upon civil liability, these findings should not be construed to be conclusive evidence of any criminal act or conduct which, if pursued in a court of competent jurisdiction, would establish a civil liability. Similarly, these findings do not preclude the existence of criminal activity and the Rules Committee leaves that determination to the appropriate law enforcement investigatory agencies. The OLBR findings:

Finding 1. Federal procurement requirements applicable to local government were not complied with.

Finding 2. OHIA was not authorized to open either a checking account or a credit card with City National Bank of New Jersey, and once established, both were administered without adequate controls.

Finding 3. There was no clear separation of duties within the vertical between employees of the County and employees of the independent corporations.

Finding 4. Proper allocation of time and timekeeping procedures were not established within the vertical.

Finding 5. The IDA procured goods and services for County agencies without following County purchasing guidelines.

³ Office of the District Attorney, Nassau County, “Dillon Announces Arrest of Former County Official Peter Sylver,” Press Release, July 8, 2004.

⁴ Hadrick, Celeste, “Sylver arrested in corruption charges”, *Newsday*, July 8, 2004.

⁵ Hadrick, Celeste, “Sylver pleads guilty, gets no jail time”, *Newsday*, July 24, 2004.

Finding 6. County employees served as board members on the independent corporations, creating the appearance of a conflict of interest.

Finding 7. Nassau County Public Utility Agency (NCPUA) has no formal process for awarding contracts to its customers

Finding 8. NCPUA operates without sufficient internal controls.

Finding 9. NCPUA is a County agency that does not appear in the County budget.

Finding 10. Overpayment of Employee.

Finding 11. The IDA maintained insufficient internal controls.

Finding 12. The IDA may have been out of compliance with Section 861 of New York State's General Municipal Law which requires the IDA to submit its proposed budget annually.

Finding 13. The EDC does not have written agreements with any of its professional service vendors.

Finding 14. The EDC has not adopted a competitive procurement policy.

Finding 15. The EDC does not have a formal policy governing meals, travel, conferences, and hotel stays.

Finding 16. The EDC did not competitively procure any of its professional services, and the EDC board of directors did not make a sole source finding for any of its professional service vendors.

Finding 17. Peter Sylver was the Chairman of the EDC, yet he executed the subrecipient contracts with the EDC on behalf of the County in his capacity as Deputy County Executive.

Finding 18. Beyond its subrecipient grants, the EDC has not entered into a formal contractual relationship with the County, nor has it entered into formal contractual relationships, as needed, with any of the other independent agencies or corporations within the Economic Development vertical.

Finding 19. The EDC does not have a means of documenting the allocation of staff time to specific projects or, in some instances, to work done on behalf of other agencies, corporations, or departments within the Economic Development vertical.

Finding 20. The EDC does not have an internal control mechanism that insures – or tests for – the compliance of EDC expenditures with applicable laws and regulations.

Finding 21. Entities within the vertical are performing duplicative work.

For many of the findings, the simple recommendation is that the **County should follow all applicable County, State, and Federal rules and procedures**. The following are some additional suggestions:

- *The existing exemption from Rules Committee approval for professional services contracts with recipients for the disbursement of grants under the Community Development Block Grant Program, should not apply to personal services contracts entered into by OHIA.*
- *The County Charter and/or Administrative Code should be amended to mandate that a County employee must obtain Board of Ethics approval before sitting as a board member of a not-for-profit corporation or public benefit corporation that does business or contracts with the County. The approval should be required regardless of whether monetary compensation is involved, in order to ascertain a potential conflict of interest or the appearance of impropriety.*
- *The expenses, staffing and revenue of NCPUA should be presented in the County Budget, and adopted by the Legislature.*
- *The EDV entities should be required to provide a semi-annual or year-end report to the Legislature, OLBR, and the Comptroller summarizing the entities' activities for the six-month period or year, including projects, contracts, revenue, expenses, etc. In addition, a formal request should be made to the State that the IDA legislation be amended to add a reporting requirement by the Nassau County IDA to the Nassau County Legislature.*
- *The bylaws should be examined for the mission and purpose of each EDV entity in question (i.e. EDC, IDA, LDC, SET, NCPUA, etc.) with the aim of proposing a consolidation of the entities, or eliminating entities that serve a duplicative purpose.*
- *Legislation should be considered to penalize those who ignore legislative subpoenas, and who refuse to testify in the absence of any legal right not to (i.e. 5th amendment).*

The Administration's "Final Report on the Finances and Operations of Certain Departments, Independent Agencies, and Independent Corporations in the Economic Development Vertical" contains many excellent recommendations that address the managerial and operational problems uncovered in the Vertical (some of which have already been implemented). To help ensure compliance Executive Order No. 3-2004, effective February 1, 2004, created the position of Nassau County Compliance Officer, who:

shall be responsible for the implementation and review of a county-wide internal control program to assure that assets are properly safeguarded and used in a manner consistent with the requirements of law and duly established managerial policies and in an effective, economic and efficient manner...

...the Compliance Officer shall report annually to the County Executive documenting steps taken to identify and implement new procedures and controls and compliance with such procedures and controls. Such report shall be filed with the Clerk of the Legislature.

I believe that the Compliance Officer will be beneficial, but no one should be naïve to think that this is sufficient to prevent the problems that occurred within the EDV. The problem emanated

from the person who served as Deputy County Executive and the structure that was implemented by incoming County Executive, Tom Suozzi, in 2002. Peter Sylver, as Deputy County Executive, had County departments report to him; while non-County agencies were also brought under his control when he also became Chairman of the Board of both the EDC and the IDA, President and Chairman of the Board of the LDC, and President and Chairman of the Board of SET. It was clear from the testimony elicited that the structure was not created by accident. Dan Deegan, a partner with the Crowe Deegan law firm testified:

The idea was that you would have these various Economic Development agencies work together; and that's why the Deputy County Executive was assigned to each one of these entities and, in some cases, as the Chairman, some cases as the Chief Executive Officer, in the case of OHIA, in order to coordinate and actually let these entities act in a synergistic fashion so that when there's a project, such as an affordable housing project, there are resources that can be brought to the table by the IDA, and there are also resources that could be brought to the table by the OHIA.

And these entities, which all bring different things to the table, different resources to the table – IDA brings taxes and financing; OHIA brings HOME funds; the EDC brings an ability to actually engage in projects directly as a separate legal entity. They were coordinated and, as I say, this was not by coincidence or by deception. This was by design and outward policy that this was the idea to do this...(1/23/04, pp. 63-65)

While it may be the case that some people will continue to defend the structure that was put in place, it has to be noted that since the completion of the hearings, the EDV has been restructured, with some of the non-County agencies essentially eliminated.

Mention must be made of several serious issues that have emerged which, though tangential to the focus of the hearings, are nevertheless significant.

Sexual Harassment Policy

It was clear from the questions asked by various legislators, and the responses received that the County's sexual harassment policy, as described by the key Administration officials in charge of its development and implementation, should be re-assessed. The legislators' concerns focused on:

- i) the confidentiality of the complainant;
- ii) the confidentiality of any settlement agreement;
- iii) the importance of clearly identifying who, in the chain of command is responsible for hearing and acting upon the complaint; and
- iv) in cases of possible criminality, clearly identifying who if anyone, bears the responsibility for reporting the incident to a legal authority.

Commissioner of Investigations

The independence of the Office of the Commissioner of Investigations was called into question as a result of its handling of the EDV disclosures. If the investigation had been truly independent

the direction of the examination would have been at the discretion of the Commissioner of Investigations and would have broadened as new allegations appeared.

An Office of Investigations can be very important in discovering waste and fraud and helps to maintain the public's trust in government. In any instance when an investigation involves the potential criminality of government officials, it should be conducted by the District Attorney, an independently elected official. If the investigation starts at a lower level, but shows the potential to involve a top executive in the Administration, then the Commissioner of Investigations should turn over her work to the DA to continue. In cases where the investigation of government officials does not involve potential criminal matters, it should be handed over to the County Comptroller. Although the Commissioner of Investigations may have the ability and desire to act independently, any conflict or the appearance of a conflict of interest must be avoided in order to protect the public trust.

Whistle Blowing

In the case where alleged misconduct is being perpetrated by an individual in a position of authority, and where normal oversight may not have sufficient reach, the whistle blower can provide a valuable public service. The County must reassure employees that if they raise any concerns in good faith and reasonably believe them to be true, they will be protected from possible reprisals or victimization. While employees do receive some protection from State and Federal law, the County does not have a whistle-blowing law at this time. The County must promote an environment in which employees are aware of their rights as whistle-blowers, and where they will feel comfortable in coming forward with their allegations.

County Attorney

Questions were raised about the propriety of the County Attorney's Office acting as legal counsel to the County's independent corporations, as well as all County entities, including the Legislature, during legislative proceedings. The hearings highlighted how difficult this is especially when the interests of the County, its employees and those of independent corporations are not aligned. When a potential conflict of interest is present between the interests of the Executive and Legislative branches, outside counsel should be utilized by the Legislature.

Legislative Hearings

The process and the people of Nassau would have been better served had the Committee done one of two things for the purpose of these hearings:

1. allowed legislative counsel to directly participate in the questioning of witnesses and the presentation of evidence; and
2. retained the services of an independent counsel to work with both sides and counsel to formulate ground rules for the hearing, including the determination of who would testify, the purpose, as well as to establish the hearings' rules of evidence.

In a complex hearing such as this, direct involvement by legislative counsel, together with that of any independent counsel or moderator probably would have allowed for the facilitation of a well-ordered and effective hearing.

Executive Summary

The Legislative hearings were often contentious, and not always smoothly conducted but they demonstrated the desire of this Legislature to uncover and rectify problems. There are questions that probably remain unanswered, but with witnesses asserting their Fifth Amendment rights, the hearings were not going to be the forum to achieve all the desired results. I am not sure how much the County has truly learned from this process, only time will tell. While there are greater internal controls in place, the Administration has to recognize and be receptive to the oversight role of the Legislature. With that said, the Legislature must be willing to use its authority responsibly regardless of partisan politics.

I would like to acknowledge the cooperation that my staff and I received from various members of the Administration, especially Robert Shelly, Elizabeth Botwin, Arthur Gianelli and Helena Williams. Special appreciation must be given to Sharon Commissiong, Majority Counsel and Michael Deegan, Minority Counsel for their helpful insights and guidance with the legalese with the preparation of this report.

I also wish to say thank you to my entire staff for their usual outstanding effort, especially Deputy Director Steve Antonio. Mr. Antonio was given the arduous task of reading all of the transcripts and drafting this report. Lastly, I would like to express my gratitude to Presiding Officer, Judy Jacobs and Minority Leader, Peter Schmitt for entrusting in the Office of Legislative Budget Review the responsibility of preparing this report for the Rules Committee. Throughout this process the independence of my office and this report were respected by both leaders. I trust that the recommendations contained in the report can prove to be constructive and assist in preventing future problems throughout the County.

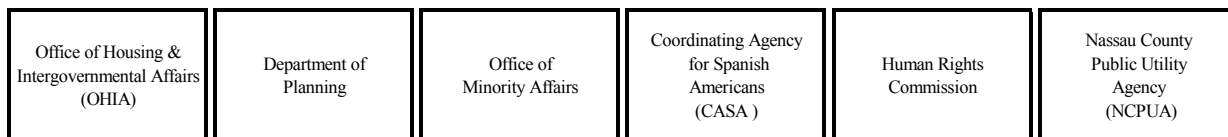
Rules Committee Hearing, Economic Development Vertical And Related Matters

The Economic Development Vertical

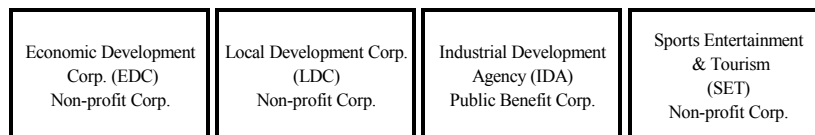
Upon assuming office in January of 2002 the Suozzi Administration grouped the agencies and departments of the Nassau County government into five function-related organizational units known as verticals, with a Deputy County Executive in charge of each. The five verticals are Public Safety and Labor, Budget and Finance, Parks, Public Works and Partnerships, Health and Human Services, and Economic Development. This structure would be incorporated into the County’s Building Consolidation Plan: “The County departments will align according to the County’s new “Five Verticals” organizational structure where possible, and will realize efficiencies in support services and human resources because of these adjacencies.”⁶ The Economic Development Vertical (EDV) was headquartered at 400 County Seat Drive.

Economic Development Vertical

County Agencies



Non-County Agencies



The EDV, as seen in the chart above, is made up of the following County agencies: the Office of Housing & Intergovernmental Affairs (OHIA), Planning, the Office of Minority Affairs, the Coordinating Agency for Spanish Americans (CASA), the Nassau County Human Rights Commission, and the Nassau County Public Utility Agency (NCPUA). In addition, the vertical encompasses the following independent corporations dedicated to local economic development: the Nassau County Economic Development Corporation (EDC), the Nassau County Industrial Development Agency (IDA), the Nassau County Local Development Corporation (LDC), and the Nassau County Sports, Entertainment & Tourism Association (SET). SET was subsequently moved to the Parks, Public Works and Partnerships Vertical, but it was part of Economic

⁶ Multi-Year Financial Plan 2002-2005, 4/1/02, p. 302.

Development during the period being investigated, and was therefore included as a subject of the Rules Committee hearings.

The nexus of these inter-related components was in the person of Peter Sylver. As Deputy County Executive, the County departments in the EDV reported to him; as Chairman of the Board of both the EDC and the IDA, as President and Chairman of the Board of the LDC, as President and Chairman of the Board of SET, the non-County agencies were also brought under his control.

The Rules Committee was not able to elicit testimony from Peter Sylver, who did appear but invoked his Fifth Amendment privilege. For the record, his lawyer, Steven Worth, categorically denied all of the allegations against his client. Some of those allegations, in addition to being outside the scope of the hearings, are serious enough to have drawn the attention of both the Federal Bureau of Investigation and the Nassau County District Attorney.

On July 8, 2004, Nassau County District Attorney Dennis Dillon announced the arrest of Mr. Sylver, on “a felony charge for submitting falsified documents, and misdemeanor charges for official misconduct, coercion, and sexual abuse.”⁷ *Newsday* reported that Mr. Dillon, during a press conference, “said the charges also end the federal government's criminal probe of Sylver's activities.”⁸ On July 23 Mr. Sylver pleaded guilty to “misdemeanor charges of official misconduct, coercion and second-degree harassment.”⁹ He was sentenced on September 14 to three years probation on the coercion and official misconduct charges, and a one year conditional discharge on the harassment plea. In addition, he paid restitution of \$1,272¹⁰.

Robert Benrubi, currently Administrator for Environmental Policy and Brownfields Redevelopment for Nassau County, was formerly a partner at the law firm of Crowe Deegan Dickson and Benrubi, which served as transition counsel for the incoming Suozzi Administration. His testimony makes clear that the interconnectedness of the entities comprising the EDV was intended from the start:

Again, I counseled and suggested that the economic development entities, the entities that had historically engaged in economic development activities be put under one roof and under the direction of one Deputy County Executive in order for them to better leverage their resources together. Yes, I had that idea. I certainly wasn't the only one with that idea. (1/23/04, p. 330)

Dan Deegan, another Crowe Deegan partner, made the same point:

The idea was that you would have these various Economic Development agencies work together; and that's why the Deputy County Executive was assigned to each one of these entities and, in some cases, as the Chairman, some cases as the Chief

⁷ Office of the District Attorney, Nassau County, “Dillon Announces Arrest of Former County Official Peter Sylver,” Press Release, July 8, 2004.

⁸ Hadrick, Celeste, “Sylver arrested in corruption charges”, *Newsday*, July 8, 2004.

⁹ Hadrick, Celeste, “Sylver pleads guilty, gets no jail time”, *Newsday*, July 24, 2004.

¹⁰ County Court of the State of New York, Nassau County, Certificate of Disposition Number 1261, September 17, 2004

Executive Officer, in the case of OHIA, in order to coordinate and actually let these entities act in a synergistic fashion so that when there's a project, such as an affordable housing project, there are resources that can be brought to the table by the IDA, and there are also resources that could be brought to the table by the OHIA.

And these entities, which all bring different things to the table, different resources to the table – IDA brings taxes and financing; OHIA brings HOME funds; the EDC brings an ability to actually engage in projects directly as a separate legal entity. They were coordinated and, as I say, this was not by coincidence or by deception. This was by design and outward policy that this was the idea to do this...(1/23/04, pp. 63-65)

This model of organization for a municipality's economic development agencies is not necessarily a bad one (see EDC section below, page 57, for a description of how other local municipalities are structured). It does however require a rigorous scrupulosity of management if it is to avoid both impropriety, and that even higher standard demanded of government, the mere appearance of impropriety. The economic development area, in particular, where government works most closely with business interests, and where both County and non-County, both public and private funding sources contribute to projects, must ensure that every "i" is dotted, every "t" crossed. That this clearly was not the case with the EDV was made evident in the County Comptroller's "Limited Scope Financial Review of the Economic Development Vertical":

Auditors observed a pattern of mismanagement, negligence and lack of normal governmental and financial controls throughout the Vertical, which operated as if it were exempt from County procedures with respect to revenues, expenses, and time and leave records. Although some of the observed problems were apparently inherited by, and pre-dated, the Suozzi Administration, the new administration failed to implement financial and managerial controls in the Vertical where there were none in place.¹¹

The Administration's "Final Report on the Finances and Operations of Certain Departments, Independent Agencies, and Independent Corporations in the Economic Development Vertical" similarly found:

flaws – some quite serious – in the Vertical's personnel management, purchasing and procurement practices, and the administration of its professional service contracts. It also highlights areas of the government where there is an absence of clear policies and procedures. Such policies and procedures have historically been lacking in Nassau County, but it is our responsibility to correct what history has handed to us.¹²

¹¹ Nassau County Office of the Comptroller, Field Audit Bureau, "Limited-Scope Financial Review of the Economic Development Vertical", January 20, 2004, Executive Summary, p. ii.

¹² Gianelli, Arthur A., Deputy County Executive, "Final Report on the Finances and Operations of Certain Departments, Independent Agencies, and Independent Corporations in the Economic Development Vertical", January 20, 2004, p.3.

The County Agencies

Office of Housing and Intergovernmental Affairs

It is not surprising that problems in the Economic Development Vertical first began to show up in the Nassau County Office of Housing and Intergovernmental Affairs (OHIA), for in addition to being subject to County regulations, the agency is also required to follow federal guidelines to be eligible to receive and distribute federal funding for the programs it administers.

OHIA is the overall administrative agent for the Federal Community Development Block Grant Program (CDBG), HOME Investment Partnership Program and the Emergency Shelter Grant Program, which are all funded through the U.S. Department of Housing and Urban Development (HUD). The primary objective of the CDBG program is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. CDBG money is made available to eligible applicants including the towns and villages that elect to participate in the County Consortium, as well as other qualified applicants. Examples of eligible activities include, but are not limited to, the elimination of slum and blight and helping social services programs such as youth counseling, senior citizen services, and handicapped access and infrastructure improvements such as drainage projects and affordable housing.

HOME funds can be used to strengthen public-private partnerships and to expand the supply of decent, safe sanitary and affordable housing, with primary attention to rental housing for very low-income and low-income families. Examples of eligible activities include the construction or major rehabilitation of residential buildings for single or multiple dwelling units, real property acquisition, site improvements and related costs.

Emergency Shelter Grant (ESG) funds are directed to the rehabilitation and operation of homeless shelters. Funds can also be used to provide essential services to the homeless and to operate homeless prevention programs.

In a January 27, 2003 letter to R. Joe Haban, Assistant Inspector General for Investigations, Office of Inspector General Hotline, Department of Housing & Urban Development, Legislator Salvatore Pontillo questioned the utilization of CDBG funds by the Nassau County Office of Intergovernmental Affairs (OHIA) for certain salaries. He indicated that the salaries of Peter Sylver and his secretary, Stephanie Wargin, and two employees working in the newly created Office of Grants Management did not warrant 100% funding from CDBG funds since these employees were not devoting 100% of their time to CDBG related projects.

Legislator Pontillo received a response, dated June 11, 2003, from Michael Litvin, Acting Director of Community Planning and Development, U.S Department of Housing and Urban Development, New York State Office, explaining that HUD had conducted a review of Pontillo's allegations and based upon the County's advisement, HUD found the County to be in compliance with HUD regulations. Legislator Pontillo wrote back to Mr. Litvin on July 15 requesting reconsideration of the findings contained in the June 11th letter. He also questioned whether Kevin Crean, Technical Director of OHIA, was violating the two-year prohibition that precludes a former federal employee from "switching sides" and representing a client on a matter

in which he participated in when he was working for the federal government. Mr. Crean had been employed by HUD prior to being hired by the County. On August 8, in a letter to Michelle Marquez, Executive Director of OHIA, Mr. Litvin requested further explanation as to the method of payment for salaries allocated to different funding sources.

On April 17, 2003, Minority Leader Schmitt sent two memos to Peter Sylver. One of these requested an OHIA personnel roster, including “any employee on the payroll of another department or agency but assigned to [O]HIA.” The other asked for a list of all vehicles, purchased or leased, by agencies or departments in the Economic Development Vertical, and the names of the individuals who were authorized to use them. Minority Leader Schmitt sent a third memo that same day to Comptroller Weitzman. It contained a series of questions relating to the construction that was done in Mr. Sylver’s office. A September 2, 2003 memo, also addressed to Mr. Sylver, requested information on credit cards he or others in OHIA might be carrying, “either issued in the name of Nassau County, a department or agency of the County or for which Nassau County pays the bill.”

On December 18, 2003 Ms. Robin Pellegrini, the former Director of the Office of Housing and Intergovernmental Affairs, filed a civil suit against the County of Nassau, the Nassau County Civil Service Commission, OHIA, and nine County officials, claiming to have lost her job as a result of refusing to “remain silent about the clear unlawful and improper actions in which the Defendants were engaging.”¹³ Her co-plaintiff in this litigation is Thomas Williams, former Executive Director of the Civil Service Commission.

Earlier in 2003 Mr. Williams had allegedly become aware of, and attempted to correct, certain irregularities relating to Civil Service regulations, in various County departments (the Treasurer’s office and Information Technology were the two non-EDV agencies). It was “discovered that five different OHIA employees were actually working in the Planning Department,” as a way, in his opinion, of circumventing Civil Service rules. (Feb 9, 2004, p. 146) In addition, as these individuals were budgeted in HI-85, which is normally reimbursed by federal grants, Mr. Williams believed that there was an improper use of federal funds occurring. After unsuccessfully attempting to remedy the situation, by informing the Planning Department of what had to be done to comply with Civil Service regulations, he moved to have the payroll certification of the employees in question withdrawn, effective October 31, 2003. This required a resolution of the Civil Service Commission, which was approved unanimously on October 28th, but rescinded on November 13th.

Mr. Williams was fired by the Nassau Civil Service Commission effective November 10, 2003. The reason given was that he had “demonstrated an inability to work with officials to resolve their hiring needs within the parameters of the civil service law and rules.”¹⁴ Mr. Williams had a different view, which he expressed in a letter that same day to Anthony Cancellieri, then Deputy County Executive:

¹³ United States District Court Eastern District of New York, Thomas A. Williams and Robin E. Pellegrini vs. County of Nassau, et al, filed December 18, 2003, Point 107.

¹⁴ Letter from Civil Service Commissioners Senko, Demos, and Gugerty to Thomas A. Williams, November 10, 2003.

This correspondence is to put the Suozzi Administration, including you and Civil Service Commissioners Gugerty and Demos, on notice that the termination of my employment as Secretary and Chief Examiner of the Civil Service Commission is a violation of my First Amendment rights to inform and protect the taxpayers from improper, illegal and possibly criminal use of federal grant monies and various other violations of law.

The EDV issues that had been simmering below the surface went public with the firing of Mr. Williams. On November 16th *Newsday* ran an article headlined, “Feds Probing Housing Office/Investigating charge Nassau misused funds.” This story revealed the existence of a credit card used by Deputy County Executive Peter Sylver, paid through federal funds, “that neither [County Executive] Suozzi nor the County Comptroller knew he had.”¹⁵ Mention was also made that the U.S. Department of Housing and Urban Development “had received a complaint last year about Nassau’s use of federal block grant money and [according to regional HUD spokesman Adam Glantz] ‘the matter is still under review.’”

The same article reported that Minority Leader Schmitt had called on Presiding Officer Jacobs the previous week to convene a special hearing of the Rules Committee, noting that his requests for information had gone unanswered for months. Presiding Officer Jacobs sent out a series of memos to administration officials asking them to respond to the questions of the Republican delegation about the housing office before deciding whether the Legislature should investigate. The Administration began to supply spending records.

Mr. Sylver resigned on November 26th. The Comptroller moved up the scheduling of a planned audit of the Vertical. Minority Leader Schmitt, on December 30th, filed a petition with the Supreme Court of the State of New York against County Executive Suozzi for “failing to provide a response to numerous demands for information and documentation relating to the Nassau County Industrial Development Agency.” (The petition was denied, but the requested information was provided.) Presiding Officer Jacobs, in a memo dated January 7, 2004, informed the Rules Committee members that a hearing on the Economic Development Vertical would commence on January 21, 2004.

The HUD Monitoring

The degree to which federal regulations were being adhered to by OHIA was the subject of a monitoring conducted by the U.S. Department of Housing and Urban Development (HUD) that took place from December 23, 2003 through March 9, 2004, covering the period January 2002 through December 2003. At the time that Peter Sylver resigned amidst allegations of the improper use of federal funds, HUD “had already been reviewing some of the issues since earlier in the year through a complaint received by [the] Office of Inspector General Hotline and had been in communication with the County towards resolution of those issues.”¹⁶ A report on the results of this monitoring, covering the four general areas of Allegations, Activities, Policies, and Procedures was released on March 24, 2004.

¹⁵ Hadrick, Celeste, “Feds Probing Housing Office, Investigating Charge Nassau Misused Funds,” *Newsday*, November 16, 2003.

¹⁶ U. S. Department of Housing and Urban Development, New York State Office of Community Planning and Development. *FY 2004 Monitoring Nassau County, New York*, p. 1.

The monitoring examined four allegations and concluded as follows:

<p>1) Salaries of non OHIA employees were inappropriately charged as administration costs to the County’s Community Development Block Grant Program</p>	<p>“In all but one instance, only employees with CDBG specific duties have been paid with CDBG funds. Non-OHIA employees appear as being paid via the HI 85 budget line, but have not been reimbursed with CDBG funds. In one instance, an employee who performed work for OHIA and the County's Planning Department during a specific period of time was in fact paid in full with CDBG funds. This payment has since been determined by OHIA to have been in error with steps taken to reimburse the CDBG Program with appropriate funds from the Planning Department.”¹⁷</p>
<p>2) OHIA employee receiving full time pay for part time work</p>	<p>“As cited in the January 20, 2004 Limited-Scope Financial Review of the County's Economic Development Vertical by the Nassau County Comptroller, an OHIA employee was hired in January, 2002, at an annual salary of \$45,000 as a full time employee to manage and coordinate a HUD funded program. In September, 2003, this employee's work schedule was reduced to a three day work week, however, the employee continued to receive full time pay without charges being made to the employee's leave reserves. Upon notification by the Comptroller's Payroll Department concerning this situation, OHIA's then Executive Director, Michelle Marquez submitted a form dated January 6, 2004, signed by Deputy County Executive Anthony Cancellieri authorizing her as OHIA Executive Director to be a signatory on all personnel documents and an authorization form dated January 6, 2004 signed by Ms. Marquez and the Civil Service Commissioner authorizing a retroactive 67% pay increase for the employee from \$45,000 to \$75,000 beginning September 2, 2003 and a retroactive 40% reduction in the employee’s work schedule to three days a week. This has allowed the employee to continue receiving full time pay as originally negotiated for a part time workweek.”¹⁸</p>
<p>3) OHIA improperly opened a program income funded checking account and a credit card account with City National Bank of New Jersey.</p>	<p>“With regard to the circumstances surrounding the opening of the above mentioned accounts and the issues of legality with regard to said accounts, this Office is not empowered to render an opinion. These issues are the subject of current investigations by law enforcement</p>

¹⁷ Ibid, p. 2.

¹⁸ Ibid, pp. 2-3.

<p>3) Continued</p>	<p>agencies. It is the job of the various agencies involved to uncover the facts with regard to these issues and to then take appropriate action based on those facts.”¹⁹</p>
<p>4) An OHIA employee improperly accepted his current OHIA position.</p>	<p>“The regulations at 18 U.S.C. § 207(b)(i) require that ‘No former Government employee within two years after terminating employment by the United States, shall knowingly act as agent or attorney for or otherwise before or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party (3) if such matter was actually pending under the employee's responsibility as an officer or employee within period of one year prior to the termination of such responsibility.’</p> <p>“Mr. Kevin Crean, the current Technical Director of Nassau County's Office of Housing and Intergovernmental Affairs (OHIA) was an employee of HUD's Office of Community Planning and Development (CPD) in New York for fourteen years prior to his employment with OHIA. When working for HUD, Mr. Crean was Nassau County's Community Planning and Development Representative for approximately 4 years. On June 28, 1998, Mr. Crean was promoted to the position of Program Manager for Team 2, which managed our Office's upstate New York communities. Upon becoming a Program Manager, Mr. Crean no longer exercised responsibility for Nassau County's HUD funded programs. Mr. Crean was a Program Manager with CPD until he separated from the Department in October of 2002. With the exception of occasional duties as ‘Acting Director’ of Community Planning and Development in the Director's absence, Mr. Crean had no official duties with regard to Nassau County for well over 4 years prior to his accepting a position with Nassau County's Office of Housing and Intergovernmental Affairs.”²⁰</p>

The first allegation HUD examined relates to the same issue that the former Executive Director of the Civil Service Commission, Thomas Williams, believed to have been an improper use of federal funds. Although the Planning Department employees were expensed to HI 85, a grant fund control center, their salary costs were journalled back to the General Fund, and no federal

¹⁹ Ibid, pp. 3-4.
²⁰ Ibid, pp. 4-5.

reimbursement was requested except in the one instance referred to above that has been corrected.

Concerning the second allegation, HUD found that the County OHIA had requested CDBG reimbursement funding for unreasonable compensation for personnel services in the amount of \$6,000. That amount represents the retroactive portion of the employee's increased compensation and reduced work week. HUD cited OMB Circular A-87 which requires that an employee's pay "is reasonable for the services rendered and *conforms to the established policy of the governmental unit* consistently applied to both Federal and non-Federal activities," and that it follow "an appointment made *in accordance with a governmental unit's laws and rules* and meets merit system or other requirements required by Federal law where applicable." (p. 3, italics added.) If the County Comptroller, as cited by HUD, had a problem with the way the salary and work schedule were altered after the fact to accommodate this employee, then the established rules and policies of the governmental unit may not have been followed.

The third allegation concerned the opening of the OHIA credit card and checking account. HUD was willing to defer the resolution of that matter to the investigations of the various law enforcement agencies.

The fourth allegation reviewed by HUD was identical to the question raised by Legislator Pontillo regarding the propriety of Kevin Crean working for Nassau's OHIA after leaving HUD. It was determined that no violation had occurred.

Finding 1. Federal procurement requirements applicable to local government were not complied with.

After addressing the allegations swirling around OHIA, the HUD monitoring evaluated Nassau's Community Development Block Grant transactions and activities. One of the findings was that procurement requirements applicable to local government were not complied with. This should not have been a problem since the basic requirement is that local governments follow their own procurement procedures "which reflect applicable State and local laws and regulations." (24 CFR § 85.36) The monitors cited the following deficiencies:

Requests for Proposals (RFP) issued to solicit a wide variety of professional services were of insufficient detail to allow for competition as required under the respective applicable regulations. In other cases, no attempt was made to adhere to applicable procurement requirements. Our examination of program files disclosed that RFPs generally consisted solely of notices advising prospective applicants of a general need to be met without providing specific details as to contract requirements. Generally, the files did not contain evidence of competing proposals or documentation of the evaluation of competing proposals by selecting officials, but instead only contained the selected proposal.²¹

²¹ HUD monitoring, op cit, p. 7

As a result of non-compliance in the procurement of certain professional services, HUD disallowed all costs related to the contracts in question, a total of \$817,932²², as reimbursable CDBG expenditures. The monitoring focused on the “transactions and activities undertaken directly by Nassau County versus activities undertaken by consortium members as part of their annual funding proposals to OHIA.”²³ The chart that follows lists the vendors and the amounts disallowed for each of these contracts.

Contractor	Disallowed Amount
Crowe Deegan	250,000
Callaghan Nawrocki	145,315
Nimble Group	143,732
Spherion Technology	102,730
Economic Development Corp.	65,686
Saccardi & Schiff	62,911
Zimmerman/Edelson	20,458
Dr. Myron Wecker	20,000
Roosevelt Chamber of Commerce	7,100
	\$817,932

Testimony was heard by the Rules Committee on a number of these contracts. Crowe Deegan will be discussed separately below. Callaghan Nawrocki is a certified public accounting firm that was hired as a consultant on the County’s HUD programs. The firm was awarded two contracts during the period of the HUD monitoring, the first from an RFP that had been issued under the previous administration. Callaghan Nawrocki’s role in the issuance of the credit card to Peter Sylver will be discussed in a later section.

A contract was executed on June 25th, 2002, with the Nimble Group to provide website development services. Nimble was the sole responder to the RFP, which had a due date of June 24th. According to the testimony of Robin Pellegrini, “work had already begun prior to RFP being placed.” (Feb. 9, 2004, p. 22.) Furthermore, as was pointed out in the Administration’s report:

OHIA paid the Nimble Group to design the website for the entire Economic Development vertical. An inspection of the website reveals that it promotes the array of economic development programs, not simply ones offered through OHIA. Again, it would appear reasonable that OHIA pay for a component of the costs incurred in the construction of the economic development website, but it is uncertain that OHIA should have paid for all of these costs.²⁴

²² The original monitoring report and the subsequent analysis of the County’s response listed contracts totaling \$865,489, but that figure included ineligible costs of \$47,557 at the Little Acorn Childcare Center which were the subject of Finding 5. The double-counted costs were subsequently removed from the tally of contracts in Finding 3, and the corrected number is used above.

²³ HUD monitoring, op cit, p. 5

²⁴ Gianelli, op cit, p.14.

Spherion Technology provided “technical assistance and consulting services for implementation, reporting and administration of the CDBG, HOME, ESG and Section 8 programs.”²⁵ This vendor was also chosen through an RFP process that began under the prior administration. Saccardi and Schiff “specializes in providing planning consulting services to municipalities for CDBG programs and other HUD funded programs.”²⁶ They were the sole responder to an RFP issued under the previous administration.

The Nassau County Economic Development Corporation, according to the monitoring report, “was billed \$65,686.25 for professional services rendered by Crowe Deegan Dixon & Benrubi between June 6, 2003 and August 1, 2003, but had not executed a contract formalizing an agreement for professional services.” Mr. Deegan gave the following testimony on this subject:

On the EDC there was a written scope of services document, which is terms of engagement which was submitted in June at a meeting I had with the Executive Director which set forth, in detail, the type of work that was required, set forth the rate that was going to be charged and set forth an estimated budget ... Under the Appellate Division rules that clearly would constitute a letter of engagement, which is not required to be signed, not required to be dated. It is required to convey upon the client an understanding of what services are being delivered. (1/23/04, p. 69)

The circumstances surrounding the contract with the Roosevelt Chamber of Commerce were explored during the questioning of witness Larry Montgomery. In February of 2002, Mr. Montgomery was hired by the County’s Office of Minority Affairs as Affirmative Action Officer for the County. At the time this agency was part of the Parks Vertical under Deputy County Executive Hezekiah Brown. When asked by Chairwoman Jacobs what his duties were, he replied that “they never became very clear to me.” (2/2/04, p. 141) After preparing a report on salary disparities within the County that was not well received by the County Executive (“I got cussed at”), Mr. Montgomery felt “that it was time to find another position.” (2/2/04, p. 181) He resigned on June 14, 2002 to become General Manager of the Roosevelt Chamber of Commerce. His job was to develop a plan “to assist the low/moderate-income persons of Roosevelt in the revitalization of the community to bring in additional businesses and creation of jobs.”²⁷ This contract was funded from a CDBG grant of \$100,000 the Chamber received. Mr. Montgomery received payment for only one month’s work (\$7,100) before being terminated by the Chamber on August 23, 2002 for, in his words, being “too aggressive.” HUD is now disallowing the reimbursement of that \$7,100. He subsequently submitted a proposal, agreed to by the Chamber, to complete the work as an outside consultant. He has initiated legal action to recover the \$26,600 he says is owed to him by the Chamber.

In addition to the disallowances for improper procurement, the HUD monitoring disallowed another \$288,137 for various technical violations, including \$47,557 related to the Little Acorn Child Care Center, and the \$38,300 in expenses paid for with the unauthorized OHIA checking

²⁵ Nassau County Response to U.S. Department Of Housing And Urban Development Office Of Community Planning And Development Monitoring Report Submitted by Patrick Duggan, Nassau County Deputy County Executive for Economic Development, May 7, 2004, p. 20.

²⁶ Ibid, p. 16.

²⁷ Ibid, p. 21.

account and credit card. This brings the total amount of reimbursement originally denied by HUD to \$1,106,069.

A point-by-point response to the monitoring, dated May 7, 2004, was prepared by Patrick Duggan, Deputy County Executive for Economic Development. Mr. Duggan attempted to make the case that, “While we are working to improve our performance, Nassau County’s program would be unfairly penalized if the proposed disallowances were imposed.” The County took the position that all but \$1,042.30 should be allowable. The acknowledged ineligible expenses, all of which were transacted on either the unauthorized credit card or checking account, include the purchase of sporting goods and refreshments for an employee softball game, and the costs for a departing employee’s going-away party.

HUD analyzed the County’s response and sent a reply dated September 20, 2004. The entire amount of the disallowance for improper procurement of personal services remained unchanged: “our Office once again designates all costs paid to date from these contracts as disallowed costs and instructs Nassau County to repay its Line of Credit in the amount of [\$817,932].” The Little Acorn expenditures of \$47,557 continued to be disallowed. Of the expenditures charged to the credit card and checking account, \$18,110 was to be repaid to HUD, with the balance conditionally allowed pending the County’s providing “additional information as directed.” (See Appendix for detail of credit card and checking account disbursements.) The only amount that was unconditionally accepted was a HOME funds expenditure of \$196,280 for a public housing project that was found to be eligible upon further review. The unreasonable compensation of the OHIA employee receiving full-time pay for part-time work, for which the County was supposed to pay back \$6,000, was addressed as follows:

In order to close this finding, Nassau County must provide an analysis of positions at OHIA with regard to individual duties and salaries. The County is to submit comparables for OHIA positions in order to verify that salaries are being awarded as per established OHIA policy and that salary determinations are consistently applied to all employees that are paid with HUD funds. If the County is unable to demonstrate consistently applied salary determinations as per an established OHIA policy, Nassau County will be required to repay the CDBG Program from non-federal funds in the amount of \$6,000 as originally instructed.

To summarize HUD’s September 20th analysis, \$883,600 continued to be ineligible and had to be repaid by the County, \$196,280 was accepted, \$20,522 was conditionally allowed, and \$6,000 could still be eligible if the County demonstrated that the salary adjustment was consistent with OHIA policy.

The County continued providing information to HUD and proposed a settlement offer dated October 18, 2004: “With regard to the remaining open HUD findings or concerns, Nassau County can best serve residents by directing its energy and activity toward further implementing managerial reforms and settling the total monetary amount of disallowances covered by the monitoring report in lieu of pursuing updates or appeal procedures.”

- The County acknowledged that the cost of the Nimble contract for designing the EDV website should not have been charged entirely to OHIA, and asked that HUD accept a repayment of the original contract amount of \$143,732 in the form of in-kind services. “This repayment in-

kind covers the expenses that could have been allocated to OHIA if supported with appropriate documentation.” The amount owed will be repaid after approximately four and one-half years, based on ongoing maintenance costs of \$20,000 annually added to the \$60,000 cost for incorporating the OHIA website into the County portal.

- The County would repay its CDBG account \$40,458 for the Zimmerman/Edelson and Wecker contracts, “since these contracts funded, respectively, an ineligible generalized public relations expense and an expense occurring prior to project eligibility.”
- “Nassau County agrees to repay \$47,557 paid to Little Acorn Childcare Center since these expenses were either incurred prior to the contract or lacked supporting documentation.”
- Of the current net disallowance of \$18,110.48 in program income expenses charged to the unauthorized credit card and checking account, \$9,908.22 had already been reimbursed by the County, and \$694.49 had been paid directly to Visa by the IDA. Nassau County would accept the disallowance of the remaining \$7,507.77.
- “In its response to the Monitoring Report, Nassau County identified factors in support of exigent circumstances for the use of non-competitive procurements. Upon further examination, Nassau County recognizes that these contracts did not fully meet the requirements of 24 CFR §85.36 regarding non-competitive procurements. Under these provisions the use of exigent circumstance should have been limited to narrow situations that are supported by appropriate documentation. The circumstances we described did not fully rise to the level necessary to meet the requirements of an exigency.

“Nassau County has made great strides in improving its procurement policy and procedures. We have issued a county-wide handbook and each procurement with HUD funds undergoes intensive internal review prior to issuance and award. We are committed to ensuring that future procurement practices are consistent with HUD rules and regulations.

“Based on the County’s intensive corrective action effort, we request that HUD exercise its discretion to waive \$681,298.49.”

In conclusion, “Based on the foregoing amounts of \$7,507.77 in requested disallowed program income expenses; \$40,458.39 in requested disallowed contract expenses; \$143,732.37 in repayment with in-kind services; and \$47,556.79 for disallowed expenses to Little Acorn Childcare Center, Nassau County agrees to repay its Line of Credit the total amount of \$95,522.95 from non-federal funds.” HUD evaluated the County’s offer and responded in a letter dated November 23:

We have carefully considered the information provided in the County’s interim reply and the later settlement offer. Based on the County’s progress in correcting areas of deficiency, the repayment terms offered in the proposed settlement, and the diminished likelihood of recurrence of the types of deficient practices cited in our monitoring report, we determined it appropriate to clear the remaining

concern and close five of the remaining six findings while accepting the County's offer in settlement of the financial liabilities associated with the monitoring report.

As of the time of this writing, a number of invoices relating to activities of the EDV remain outstanding. OHIA must still pay a total of approximately \$80,000 to certain vendors (Saccardi & Schiff, Nimble Group, Crowe Deegan, and Zimmerman/Edelson) whose contracts have been ruled ineligible for CDBG funding as a result of non-compliance with HUD procurement regulations. An additional \$92,247 in pending claims was incurred more generally on behalf of the EDV. These include charges for radio and print advertisements, legal fees, architectural planning, and land use analysis. OHIA will accrue for these expenses in FY 04, utilizing its non-federal funding, and will not seek HUD reimbursement.

Another personal services contract that did not come before the Legislature was for the performance of a disparity study of County contracting, for which an RFP was issued in the fall of 2002. MGT of America was selected. The budget for the Office of Minority Affairs did not include funding for the study, which cost \$185,000, and was expensed to the CDBG Fund.. The County has not sought HUD reimbursement for this expense, which at best would have been only partially eligible for federal funds.

Recommendation: The existing exemption from Rules Committee approval for professional services contracts with recipients for the disbursement of grants under the Community Development Block Grant Program, should not apply to personal services contracts entered into by OHIA.

Local Law #37 of 2000 amended the County Charter to subject personal service contracts greater than \$25,000 (or \$50,000 aggregately in one year) to review by the Rules Committee. Personal service contracts are defined as "contracts for professional and other technical services which are not subject to the competitive bidding requirements under Section 2206 of the County Government Law of Nassau County or Section 103 of the General Municipal Law." Subsection c) xi exempted "contracts with recipients for the disbursements of grants under the Community Development Block Grant Program." The Charter should be amended to make it clear that this exemption does not apply to personal services contracts entered into by OHIA, even when such contracts are eligible for HUD reimbursement.

Crowe Deegan

The Crowe Deegan law firm, in the words of partner Dan Deegan, "assisted the incoming Suozzi Administration's transition efforts in the two months prior to January 2002 on economic development matters." (1/23/04, pp. 40-41) Crowe Deegan had worked with County Executive elect Tom Suozzi in its role as counsel to the City of Glen Cove, the Glen Cove Industrial Development Agency and the Glen Cove Community Development Agency while Mr. Suozzi was mayor. The transition work was performed on a pro bono basis. The Rules committee was provided a document detailing the firm's time slip listings for the Suozzi Campaign as client for the period 11/7/01 through 12/31/01. It shows approximately 270 hours of work performed, at a rate of \$235 per hour, for a total of \$63,426.50, had the client been billed for these services.

The one project that was billed during this period was for work done on the acquisition of the Grumman property:

Mr. Deegan: The reason the Grumman matter was different, if you would like the answer, the reason the Grumman project was different was because we were contacted by representatives from the prior administration, both their outside counsel, their Executive Director of the Industrial Development Agency, other County staff that we worked with and attorneys for the Navy and attorneys for Northrop Grumman. (1/23/04, p. 203)

Mr. Deegan: During this period Crowe Deegan expended time and effort in reviewing and drafting documents, attended meetings and getting up to speed on this complex project. We then helped guide the project to a position where it would be preserved for the incoming County Executive.

Upon being retained by the IDA, Crowe Deegan submitted a bill for services rendered during this period – less than \$4,000 and, once again, billed at \$175 an hour. Recognizing the tremendous value conferred upon the County and the IDA by these services, the Chairman approved these fees and payment was made. (1/23/04, pp. 53-54)

The Rules Committee, on April 29, 2002, approved a contract, by a party-line vote of 5-4, for Crowe Deegan to provide professional services for the Office of Housing and Intergovernmental Affairs. The scope of services and rates agreed to were as follows:

Part 1 Commencing and effective January 1, 2002, and ending February 15, 2002 the Subrecipient [Crowe Deegan] shall provide administrative services to the Office of Housing and Intergovernmental Affairs (OHIA). The Subrecipient shall be paid at a rate equal to twelve thousand five hundred (\$12,500) dollars per month. While this rate is far below the professional rates normally charged by the Subrecipient, it is intended to be equivalent to the cost of the salary and benefits that would have been incurred by OHIA had a commissioner been in place for this period.

Part 2 Commencing and effective February 16, 2002, the Subrecipient shall provide legal services to OHIA relating to OHIA activities at an hourly attorney rate of \$175/hr.

Part 3 During the term of this Contract, Counsel will not represent any party whose interest is or may be adverse to or in conflict with, or whose interests may appear to be adverse to or in conflict with the interest of the County, nor will it commence any action or proceeding, or act as counsel in any action or proceeding that is adverse to the County or to any County officer or employee, without the County's prior written consent."

The contract was awarded on a non-competitive basis, described as follows by the Comptroller:

With respect to the procurement of personal services contractors such as law firms, county rules generally require that at least three firms be considered prior to a contract award. A better practice, however, is the issuance of a request for

proposals. With respect to OHIA, there is no evidence that three firms were considered before Crowe, Deegan was hired.²⁸

Mr. Deegan pointed out his firm's unique qualifications:

The legal services performed by Crowe Deegan in support of economic development are a highly specialized type of legal work for which we are uniquely qualified. Crowe Deegan was selected by the County because of the firm's expertise and strong track record regarding economic development issues and the firm's reputation for helping municipalities achieve their economic development objectives. (1/23/04, p. 38)

Mr. Deegan also stressed the exigent circumstances that existed at the time the firm began its work:

In December 2001, the New York State Department of Housing and Community Renewal – DHCR – had decided to suspend the County's control over its Section 8 Housing Program due to mismanagement, and it gave the County 60 days, starting January 2, 2002, to formulate an acceptable remediation plan...

In addition, Nassau County's annual consortium CDBG allocation, which was in danger of reverting to HUD due to years of under-spending, under-performing and lack of proper consortium documentation and performance.

Because of these problems the incoming administration had determined that the then-Commissioner of OHIA, as well as the majority of the remaining OHIA staff, were to be terminated.

It is against this background – that is, no Commissioner, a decimated staff, a looming deadline from the State, and the potential significant loss of block grant funding – that the incoming administration directed Crowe Deegan, starting January 1, 2002, to immediately take an active role in stabilizing OHIA pending the appointment of a new department head and, thereafter, to continue to represent OHIA with regard to the various programs and projects that remained in severe disarray. Deputy County Executive Peter Sylver was not hired until February 16, 2002. (1/23/04, pp. 41-42)

In its May 7, 2004 response to HUD's monitoring report, OHIA reiterated that same argument and defended the procurement process that was used:

The Crowe Deegan contract was approved pursuant to the County Charter by the County Legislature. In presenting the contract to the Legislature, the administration explained the procurement and the necessity to work with a firm starting on the first day the administration took office due to the immediate crisis of the pending loss of Section 8 programs and CDBG funds. Upon approval of the Rules Committee of the Legislature, the County entered into a two-year contract with Crowe Deegan for a total of \$250,000.

Thus, it is unclear on what basis this contract has been disallowed for failure to follow procurement regulations. Upon review of the FY 2004 monitoring letter,

²⁸ Comptroller's Report, op cit, p. iii.

the County can only assume that one of two issues concerned HUD: 1) The length of the contract (two years) exceeded the length of the emergency; and 2) the contract was finally executed after the emergency had passed.

As an initial matter, HUD regulations do not require that, once a vendor is selected under emergency and exigent circumstances, the contract be limited to the period of exigency. When the County determines that exigent circumstances exist sufficient to justify the award of a contract without a competitive process, it is entirely within the regulations for the County to enter a contract under conditions deemed most beneficial to the County, including negotiating a term that would avoid future disruptions to the Section 8 and other CDBG programs at a favorable price. HUD has cited no law, regulation, guideline, precedent or other authority to the contrary. In fact, the Crowe Deegan rate of \$175 per hour blended rate for partners and associates was less expensive than special counsel rates previously contracted for by OHIA.

As to the date of execution of the contract, ordinarily, where there is an emergency, the municipality secures a contractor first to address the emergency and then has the contract and/or payment approved by the appointing authority nunc pro tunc, as was done in this situation.

The Crowe Deegan contract was not a departure from HUD's procurement standards. It represented the effective and appropriate use of those regulations to meet a real need – providing uninterrupted housing and economic development benefits to those most in need.²⁹

The HUD analysis of the County response to its monitoring addressed this issue of exigent circumstances:

The regulations at 24CFR 85.36(d)(4)(i) allow procurement by noncompetitive proposals only “when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals” and meets one of four circumstances. One of those circumstances is “The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation” (85.36(d)(4)(i)(B)). The exigency or emergency in this case must be one that will have a direct effect on the public. The fact of the matter is that the assumption of local Section 8 Program management by the New York State Division of Housing and Community Renewal (DHCR) would not have caused a “public” exigency. Section 8 funding for the people of Nassau County was never in jeopardy nor was it ever threatened. The only exigency that existed for Nassau County was the loss of administrative fees that would have been paid to OHIA's Section 8 staff had that staff not allowed program deficiencies to go unchecked. The public would have been served directly by DHCR staff during its takeover without interruption and Section 8 funding would have continued to be available to the public.

²⁹ Nassau County Response To U.S. Department Of Housing And Urban Development Office Of Community Planning And Development Monitoring Report Submitted by Patrick Duggan, Nassau County Deputy County Executive for Economic Development, May 7, 2004, p. 15.

With regard to the County's contention that without the intervention of Crowe Deegan Dixon & Benrubi, millions of CDBG dollars would have been lost due to the County's untimeliness, be advised that as the Office responsible for Nassau County's Community Development Block Grant funding, including tracking of grantee timeliness, the New York Office of Community Planning and Development at no time interacted with or consulted with the staff of Crowe Deegan Dixon & Benrubi in order to solve Nassau County's timeliness problems. If Crowe Deegan Dixon & Benrubi took a role in creating a strategy for spending down CDBG funds at that time, this Office was unaware of it.

As previously mentioned, the County's October 18, 2004 settlement offer to HUD acknowledged that the non-competitive procurements "did not fully rise to the level necessary to meet the requirements of an exigency."

The minority members voted against the contract for several reasons, including the possibility of Crowe Deegan having a conflict of interest in representing the County's interest in obtaining community development funding while also serving as counsel to the community development agencies of North Hempstead and Glen Cove. Questions were also raised as to why the contract had not been bid, and why the work had been going on for four months before being brought to the Legislature.

In his testimony Mr. Deegan addressed the procurement issues as follows:

You have to understand and I think everybody has to understand Crowe Deegan does not procure Crowe Deegan; the County procures Crowe Deegan, the LDC, the EDC. We don't do the procurement. We didn't process our contract. Our contract was drafted by the County. It was circulated to the County. Ultimately, the question should it have gone out for bid, we don't put it out for bid, this Rules Committee, including the minority, voted for our contract based upon the very good grounds that there was an emergency situation over there, they had to get somebody in right away, and that was ratified that that's what had to be done. (1/23/04, pp. 88-89)

Mr. Deegan's reference to the minority having voted for the contract was based on a document in his possession which incorrectly showed that the contract had been passed unanimously.

The conflict of interest issue was followed up in a letter sent by Minority Leader Peter Schmitt, which formally requested an opinion from the County Attorney's office. Elissa Stein Cushman, Deputy Chief, Legal Counsel Bureau was asked by County Attorney Lorna Goodman "to explore the propriety of the County's personal service contract with the firm of Crowe, Deegan, Dickson and Benrubi in response to a request by Minority Leader Peter Schmitt ... in light of the fact that Crowe Deegan is also a consultant to the North Hempstead Community Development Agency and the Glen Cove Community Development Agency." Her response, dated July 22, 2002, reached the following conclusion:

Based on my understanding that: 1) Crowe Deegan plays no part in the administration of Community Development Block Grant monies for which the town agencies apply to the County; 2) Crowe Deegan intends to recuse itself from participation in any other transaction between the County and the town agencies;

and 3) Crowe Deegan's representation of the County and the town agencies does not appear to constitute a representation of 'differing interests' under the Disciplinary Rules, it is my view that the County acted appropriately in entering into the contract with Crowe Deegan.

Mr. Deegan had this to say on the conflict of interest issue:

Our conclusion was knowing the fact that we absolutely did not have any influence or direction on the allocation of the Block Grant Funds, rather we worked on specific projects by OHIA, and we did not find it to be a conflict.

In addition, in response to a written request raising the issue by Mr. Schmitt, I think back in June 2002, he asked the County Attorney's Office to render an opinion regarding it, and they issued a written opinion concurring in that. Because we we're not involved in decision or discretion of the allocation of block grants, which was clearly in the discretion of the Director of OHIA, the Deputy County Executive and the County Executive himself, not in the attorneys hired to work on projects, that there was no conflict between those entities.

In addition to that, I understand from some of the questioning that I've heard on Wednesday – or heard about on Wednesday, I wasn't here for it – that there is a question of whether or not there's a conflict of interest for the firm to represent the EDC, the IDA, the OHIA and all the different entities that are over there. Let me answer, first of all, unequivocally absolutely no, there is no conflict of interest. In fact, it is not by coincidence that we have represented each one of these entities, it was by design. These entities have community interests, community interests in promoting the economic development in Nassau County. (1/23/04, pp. 62-63)

Crowe Deegan also represented the IDA, EDC, SET and LDC, independent entities whose contracts are not approved by the County. To date, according to Mr. Deegan, Crowe Deegan has billed approximately \$700,000 for the work performed on behalf of the Economic Development Vertical (1/23/04, p. 132), including \$302,575 for EDC and \$278,286 for OHIA. No legal services have been performed by Crowe Deegan on behalf of OHIA since May of 2003. There is an outstanding amount due of \$28,286, for work which has been performed, but in order for it to be paid the contract will have to be amended, as the maximum \$250,000 has already been expended.

Since the Crowe Deegan firm played such a central role in the organization and development of the entire Economic Development Vertical, it seems fair to ask what responsibility they bear for the operational problems that became the subject of the Rules Committee's hearing. And in fact, representatives of the firm were asked just that:

LEGISLATOR SCHMITT: But did you focus on the organization and policies of Nassau County's Economic Development Offices? I understand you're saying you gave policy advice and suggestions -

MR. BENRUBI: What I counseled the incoming County Executive to do, or what I suggested, was that the economic development offices, that is those offices that historically engaged in economic development activity ought to be put under one

roof and ought to have one Deputy County Executive overseeing those offices. That is what I offered. I didn't offer any detail as to how they should internally be organized as in how boards should be constituted or things of that nature. I didn't engage in that. (1/23/04, pp. 329-330)

LEGISLATOR SCHMITT: Did Crowe Deegan advise OHIA to open a checking account?

MR. DEEGAN: No.

LEGISLATOR SCHMITT: Did you advise them not to?

MR. DEEGAN: No. Are you referencing the checking account that's been the subject of the reports? We had no knowledge regarding the checking account.

LEGISLATOR SCHMITT: You had no knowledge regarding the checking account.

MR. DEEGAN: We were not asked by the client to pass any decision on it. We didn't know about the bank account or the credit card until some time, probably about the same time you guys did. (1/23/04, pp 170-171)

MR. DEEGAN: We were more projects based, and we did work at the direction of the client. When the client, Peter Sylver or someone else from OHIA, called us and asked us a question we would answer it. If they called a meeting on a particular project, we would attend; we would draft documents at their request. We were not there in an auditing function or in a day-to-day function. (1/23/04, p. 177)

As was mentioned above, HUD disallowed reimbursement of \$250,000 to OHIA for costs related to its contract with Crowe Deegan for improper procurement.

Finding 2. OHIA was not authorized to open either a checking account or a credit card with City National Bank of New Jersey, and once established, both were administered without adequate controls.

Since the opening of the checking account and credit card are possible criminal matters currently under investigation, the Rules Committee was not able to elicit testimony on these matters from the witnesses who were directly involved in those decisions.

The County Charter, § 2205 states that, "All sums received or collected by any department, institution, office or agency of the County ... shall be paid without deduction to the County treasurer." As a result of the credit card and checking account not being established pursuant to County procedures, the usual rules and safeguards governing purchasing and payment were able to be circumvented.

The program income account provided the funds with which the OHIA corporate checking account was opened. Program income is revenue that OHIA, Consortium members and the smaller villages generate from the repayment of loans by small businesses, the recapture of

mortgages by homeowners who either default on a mortgage or terminate a mortgage before the allotted time and smaller fees charged for such services as administering the bid process. OHIA receives the bulk of program income but Consortium members also generate income; some, enough to begin projects without having to wait for the lag time of reimbursement.

The checking account was opened with the City National Bank of New Jersey with a check for \$16,251.79 in May 2003. The check was from Henkind Engel Meadowbrook L.P., a holding company based in Lynbrook, and was a quarterly payment for a loan the County had made. The quarterly checks had previously been deposited into an account held by the County Treasurer.

The signatories for the new checking account were Peter Sylver, Joseph Gioino, Kevin Crean and Michelle Marquez. The application for the checking account was completed under the bank's direction by OHIA financial analyst Shirley Dews. Ms. Dews submitted a statement to the Rules Committee (Exhibit B) in which she wrote:

When I reviewed the paperwork, I noticed that a corporate seal was required. I brought the form to Kevin Crean who said he didn't know anything about a seal or whether the OHIA had corporate status. He only had a tax identification number. Sometime later I called Ms. Lula Clemmons [Manager of the CNB Hempstead branch] to have her help me fill out the paperwork. At the time I advised her that the OHIA did not have the word "Corporation" or the word "Inc." following the name, and that it was the wrong form. Ms. Clemmons told me that she needed this form and she subsequently instructed me how to fill out the form. She told me a corporate seal was unnecessary. She told me to put Mr. Peter Sylver's name in the opening paragraph of the form. Ms. Clemmons also advised me that the persons authorized to sign checks should also sign the corporate authorization form.

Since OHIA is not a corporation but an agency of Nassau County government it does not have a corporate seal. The area on the form for the imprinted seal was left vacant as per Ms. Clemons. The application was signed by Michelle Marquez and Kevin Crean and approved by the bank.

Much the same process was followed in the application for Peter Sylver's \$5,000 limit, unsecured corporate credit card with City National Bank of New Jersey. After receiving the forms from Peter Sylver, Shirley Dews was instructed by the bank to complete only a third of the forms which included Peter Sylver's home address. No credit information was supplied, or required. According to Milton Farrow, Vice President City National Bank, it is not standard practice to run a personal credit check on a corporate credit card application. The bank suggested that the account be opened as a corporate account for OHIA which required a resolution by OHIA for such a request. On May 14, 2003, Michelle Marquez and Kevin Crean created and signed, on OHIA letterhead, a resolution authorizing Peter Sylver to be issued a credit card for the Nassau County Office of Housing & Intergovernmental Affairs. It is important to note, that both Ms. Marquez and Mr. Crean were subordinates of Mr. Sylver and reported either directly or indirectly to him. It is highly unusual for a subordinate to grant authorization to a superior for anything, much less the use of a credit card.

Again, there was no corporate seal imprint. Ms. Dews again questioned this application procedure but was assured by the bank that this was the way it should be done. It appears that

the card was approved on the strength of a memo sent to Milton Farrow, Vice President, City National Bank from Michael Nawrocki of Callaghan Nawrocki LLP, Certified Public Accountants. Mr. Nawrocki has had a seventeen-year history with the OHIA as an independent public accountant. His memo recommended the approval of Peter Sylver's credit card application with City National Bank citing Mr. Nawrocki's assertion that OHIA had a sound credit reputation for paying its obligations on a timely basis and that all costs incurred by OHIA were covered under reimbursable cost contracts. Based on Mr. Nawrocki's memo to Mr. Farrow, who in turn recommended approval to Stanley M. Weeks, Senior Vice President & Chief Credit Officer of City National Bank, the application was approved. "By providing the credit reference, the accountants assisted OHIA in opening an account it had no legal authority to open."³⁰

Peter Sylver, Kevin Crean, and Michelle Marquez refused to answer questions relating to their roles in the opening of the checking account and credit card.

Opening the credit card account coincided with the time the Economic Development Corporation (EDC) became incorporated. According to Kevin Crean, the use of credit cards is perfectly acceptable within HUD regulations. The problem arises from the circumvention of the County's normal channels in exchange for a more expeditious process. The fact is that the Treasurer and the Comptroller were unaware that a credit card had been issued to a County agency. This created an enormous potential for abuse.

Although HUD did not decide on whether any improprieties were committed in the process of opening the credit card and checking account, an examination was made of the "expenses paid for with CDBG program income that was deposited in the checking account," many of which were charged to the credit card. HUD found that \$38,300.22 out of \$39,317.79 worth of expenses were unjustified:

Our review of the County's records with regard to these expenses has found that with the exception of receipts, no documentation exists in the County's files to justify the expenses paid for with program income funds. In addition, the costs examined would not meet the requirement of being "necessary" for proper and efficient performance and administration.³¹

Another \$1,017.57 would have been disallowed, but that amount had been personally reimbursed by Peter Sylver.

Airline tickets, lodging, seminar and conference registration fees were all allowable expenditures for Industrial Development Agency (IDA) and Economic Development Corporation (EDC) activities. The credit card was in Peter Sylver's name, under OHIA, as the corporation, and supported by federal funds. Although EDC expense may be derived from federal money, IDA activity cannot. The IDA is a public benefit corporation and gets its authority to bond from New York State. Before the Housing audit began, the Nassau County IDA was in the process of attempting to gain CDGB subrecipient status in order to garner federal funds. Although the IDA

³⁰ Comptroller's, op. cit., p. 6.

³¹ Ibid, p.4.

reimbursed OHIA for its expenditures, the use of the federally funded credit card is highly questionable.

Some of the credit card activity, if it had been properly documented, might have been allowable under County rules, such as the business meals. Other expenditures fell within neither the federal guidelines nor County policy. These include car washes and two window tinting treatments for Mr. Sylver's leased Crown Victoria, purchases, such as candy and soda, from Walgreen's, CVS and Stop and Shop and even a \$10.00 charge at the Borgata Hotel Casino in Atlantic City, all of which fall outside the boundary for legitimate expense. The same could be said of the Fortunoff and Tiffany gift purchases. The charges for gas and car washes are acceptable under HUD regulations, but the County's policy states that County service garages must be used whenever possible for oil, gasoline and other accessories and services.

It is possible that a number of the expenses disallowed by HUD would have been permissible, if only OHIA had properly documented them, as per the County's own procedures. Instead, the County Comptroller's audit found that:

- Purchases of equipment and supplies were not made using required Nassau County procedures;
- Purchase orders were not utilized to obtain pre-approval for purchases;
- There were no receiving reports indicating that goods and services purchased were received;
- Invoices were not cancelled to prevent duplicate payment; and
- Invoices were not approved for payment.³²

A similar lack of procedural governance was exercised over the use of the credit card, as pointed out in the Comptroller's report:

Deputy County Executive Peter Sylver, as the only authorized signatory, incurred all of the charges. No evidence of review or approval prior to payment was found. The bank was authorized to debit by telephone OHIA's non-NIFS account for the amount of the monthly credit card bills.³³

In addition, the credit card was used on behalf of the independent corporations:

We also found that expenses were incurred using the OHIA credit card for non-OHIA expenses. OHIA should not extend credit to the independent corporations in the Vertical or charge federal grants for expenses of the independent corporations. While some of these expenses were reimbursed by other independent corporations within the Vertical, others were not. For example, \$674 in expenses were incurred on behalf of the EDC, \$246 were incurred on behalf of the IDA and \$292 was incurred that should have been charged to an EPA Grant.³⁴

Mention should be made that there was at least one employee at OHIA, Shirley Dews, who questioned the validity of some of the expenses that were being charged to the unauthorized credit card.

³² Comptroller's Report, op. cit., p. 20.

³³ Ibid, p. 18.

³⁴ Ibid, p. 20.

LEGISLATOR ALTMANN: You saw the documentation and you felt, I'm not going to put words in your mouth, you didn't feel comfortable?

MS. DEWS: That's okay. I wasn't comfortable with it. I wasn't authorized to make that decision.

LEGISLATOR ALTMANN: Right. What items weren't you comfortable with?

MS. DEWS: I'm sorry?

LEGISLATOR ALTMANN: What items weren't you comfortable with?

MS. DEWS: Oh, I don't remember them. There were so many.

LEGISLATOR ALTMANN: There were so many of them?

MS. DEWS: I'm saying the bills in particular, yes.

LEGISLATOR ALTMANN: So, you passed them along to whom?

MS. DEWS: The bills went from Raffaella Petrasek [Executive Director of the EDC, to whose attention the bills were sent] when reviewed by either Kevin Crean, Michelle Marquez, Chris Senior even took a look at them.

LEGISLATOR ALTMANN: And what happened after that? Do you have knowledge of what happened to those bills?

MS. DEWS: I was told that the bills had to be paid.

LEGISLATOR ALTMANN: And they were going to be paid?

MS. DEWS: Yes. And that they fell under the regulations, yes.

LEGISLATOR ALTMANN: Did you make written notations of your concerns or did you just tell them verbally that you were worried?

MS. DEWS: I have documentation that I did make my concerns known. (1/26/04, pp. 255-257)

LEGISLATOR SCHMITT: Was there any time when you raised objections or questioned or indicated your uneasiness with what was going on and were told, just do it, don't worry about it, just do it?

MS. DEWS: Yes.

LEGISLATOR SCHMITT: Who did that?

MS. DEWS: Ms. Marquez.

LEGISLATOR SCHMITT: Ms. Marquez?

MS. DEWS: Yes.

LEGISLATOR SCHMITT: On one occasion or more, or?

MS. DEWS: Basically from that email that you just saw. That was one of the more poignant ones that kind of hit home.

LEGISLATOR SCHMITT: And did you feel threatened by that?

MS. DEWS: Well, nobody wants to feel threatened while they're doing their job, especially when they enjoy doing what they do as much as I do. But yes, I did feel uneasy.

The e-mail referred to by Ms. Dews (Exhibit DD) was sent to her on September 8, 2003 by Ms. Marquez. It contained the instruction, "Also, going forward, as we discussed, whenever the bill arrives, just pay it in full and we'll resolve the accounting/auditing of the bill afterwards."

LEGISLATOR CIOTTI: Did you feel comfortable with that?

MS. DEWS: Absolutely not.

LEGISLATOR CIOTTI: I mean, isn't the whole concept of you getting this bill to at least question or to look at it and question it and go to the appropriate generating party?

MS. DEWS: Yes, and that's what I did.

LEGISLATOR CIOTTI: That's what you did?

MS. DEWS: Yes, I did.

LEGISLATOR CIOTTI: Okay. And was that statement, just do it, made after September 8, 2003, by Marquez, or before September 8th?

MS. DEWS: Prior to as well. When they needed to be paid.

LEGISLATOR CIOTTI: So she's telling you verbally to do it?

MS. DEWS: Yes.

LEGISLATOR CIOTTI: And then she's telling you in writing to do it?

MS. DEWS: Yes.

LEGISLATOR CIOTTI: And at that point, you're done questioning?

MS. DEWS: I don't know who else to talk to.

LEGISLATOR CIOTTI: Well, what I'm saying is, at that point, you've questioned or queried enough that you're feeling, maybe I'm a little bit in jeopardy if I keep pushing this?

MS. DEWS: Yes.

LEGISLATOR CIOTTI: Is that an accurate statement?

MS. DEWS: Yes, that is.

LEGISLATOR CIOTTI: So you're feeling more than just a little intimidated by this whole situation?

MS. DEWS: To say the least. (1/26/04, pp. 309-311)

Finding 3. There was no clear separation of duties within the vertical between employees of the County and employees of the independent corporations.

A few examples of personnel management will give a sense of the way in which the component parts of the EDV interacted under Mr. Sylver.

In April of 2002, Ms. Kathy Todd was hired as Deputy Director of the IDA. The Director, Joseph Gioino, decided that he did not require a deputy, so Ms. Todd was shortly thereafter appointed Deputy Director of NCPUA. In March of 2003 she became acting Director of NCPUA. Towards the end of that same year she started working on business retention and attraction for the Economic Development Corporation. In addition to those functions, she also serves as office manager for the economic development vertical as a whole. Rather than setting up a departmental payroll for the one NCPUA employee, it was determined that Ms. Todd would be paid out of the Office of Housing and Intergovernmental Affairs, and before that by the IDA. Her salary is then reimbursed by NCPUA. There was a period during which Ms. Todd was accidentally overpaid, but she did not cash the checks. Furthermore, the Comptroller's audit indicated that "the IDA had been under-reimbursed by about \$35,000."³⁵

The aforementioned Mr. Gioino, besides serving as Executive Director of the IDA, was on the board of both EDC and LDC. In an "unofficial" capacity, he was also listed as Chief of Staff of the Economic Development Vertical, and in spite of not being a County employee, was a signatory on the OHIA checking account (he testified that he did not sign any checks.). He did, however, sign checks for SET.

Recommendation: A clearer separation of duties between employees of the County and employees of the independent corporations must be established and maintained.

Finding 4. Proper allocation of time and timekeeping procedures were not established within the vertical.

With EDV employees performing work on behalf of multiple agencies and multiple projects with various funding sources, careful timekeeping becomes a necessity. And yet, as was pointed out by Comptroller Howard Weitzman in his testimony, there were operational shortcomings in this crucial area: "In our examination of salaries and time and leave, auditors observed instances of sloppy or non-existent timekeeping, unauthorized leave, or leave taken but not posted to the County's payroll system, in every unit in the Vertical." (1/21/04, p. 36)

In addition, as was pointed out in the Administration's report:

Employees in the Economic Development vertical have had their salaries split and paid from more than one department, agency, or corporation in the vertical. Three employees of OHIA, and one employee of the County Attorney's Office, received stipends during the 2003 fiscal year from the Nassau County Industrial Development Agency ("IDA"). Though not precluded by applicable laws or

³⁵ Comptroller's Report, op cit., p. 44.

regulations, splitting salaries among the various organizations in the vertical reduces the transparency of the compensation of County employees.³⁶

Peter Sylver's executive assistant was paid at an annual rate of \$15,000 and her successor was paid \$10,000. "These stipends have been based on high-level estimates of work, not upon actual hours logged on behalf of the IDA."³⁷

To cover payroll expenses for two seasonal employees hired by the EDC in the summer of 2003, a check (#1017) was drawn on OHIA's unauthorized account made out to the Nassau County Economic Development Corporation. HUD disallowed the \$3,999.41 disbursement as a CDBG program expense, but left open the possibility that the costs "could be considered project delivery costs associated with implementation of activities to be undertaken through EDC's contract with the County."³⁸ This payment illustrates the importance of detailed record keeping so that it can be shown just what precisely these employees were doing, for what agency, and with which funding source they should be paid.

Recommendation: *As stated in the Administration's report, OHIA – and all departments, corporations, and agencies in the vertical – should use time sheets that are consistent with the requirements of OMB Circular 87 and allocate employee time worked by (i) agency, department, or corporation within the vertical; and (ii) program within each agency, department, or corporation. OHIA should utilize the Circular and consult with HUD regarding the accounting of indirect costs.*

Finding 5. *The IDA procured goods and services for County agencies without following County purchasing guidelines.*

The purchase by the IDA of used office furniture from Morgan Stanley is another telling example of how the EDV managed its affairs. For \$10,000, the IDA was able to obtain an amount of furniture "far in excess of that needed for a public benefit corporation with only six employees."³⁹ It turned out that getting the desks, chairs, credenzas, loveseats, and file cabinets into 400 County Seat Drive cost an additional \$24,630. The furniture was then disbursed to various agencies within the EDV. Lewis Yevoli, former chairman of the IDA, testified:

It's hard to be criticized ... for saving the County money. It's unique to me. We're in a position of having to defend saving Nassau County's taxpayer's money, and I don't quite understand the logic of that. How could you be criticized for that? But we are being criticized for that. (1/23/04, p. 564)

The problem, characteristically, was in the process itself, in the lack of controls and record keeping which are essential to good government practice:

There was no evidence that IDA obtained bids for the furniture purchase or performed any analysis or appraisal to determine whether the total acquisition

³⁶ Gianelli, op cit pp. 9-10. The OHIA employees and the amounts received were Stephanie Wargin (\$8,614.17), Charlene Thompson (\$4,999.05), and Leigh Stiglitz (\$4,163.86). Chris Senior, of the County Attorney's office, received \$6,999.98.

³⁷ Ibid pp. 9-10

³⁸ HUD September 20, 2004 reply to Nassau's response

³⁹ Ibid, p. 26.

cost of \$34,143 represented a reasonable cost for the furniture ... The invoice was not marked to indicate that all the items invoiced were received. Inventory controls that should be standard for such fixed assets were not maintained. Joseph Gioino, the Executive Director of the IDA, informed us that he would be unable to identify where all the furniture purchased was located.⁴⁰

The Administration's report found that:

The IDA purchased equipment and furniture on behalf of other County departments and independent corporations, yet the IDA's procurement practices are less restrictive than those of the County, and the IDA has not been properly reimbursed for these expenses. ... The cost of this furniture should be borne on a pro-rata basis by all of the beneficiaries in the vertical.⁴¹

Another issue related to this purchase was whether the furniture that ended up in County offices should have been regarded as a gift from the IDA, in which case it would have needed to be approved by the Legislature, pursuant to New York State County Law, § 215(3).

Another expenditure of the IDA was for the construction of a conference room and other space for use by the IDA Board. According to the Comptroller's report, "In, reality however, the contractor considered office space to be used also for Deputy County Executive Peter Sylver (who had management responsibilities for the entire Vertical), the Director of Planning, Patricia Bourne; the Deputy Director of Planning, Michael Levine; the Special Assistant to the Director of OHIA, Osceola Pope; and the Director of NCPUA, Kathy Todd."⁴² This cost for this work was \$10,384.

The IDA also purchased, at the request of Chairman Peter Sylver, a plasma TV for \$6,747, which ended up in a conference room on the fourth floor of 1 West Street. The IDA's Executive Director Joseph Gioino explained the site selection as follows:

I think it was a couple fold. At or about the same time Peter was in negotiations about the IDA office or the Economic Development Vertical moving. I keep hearing imminent, but I don't know what the situation is with the consolidation plan is, but there has been meetings regarding moving the Vertical to 40 Main Street, I believe. Within the next few months, it is my understanding, we're going there. So that was one intent.

I think the other intent was to put it in a essential location where if we needed to use it other people could have the access to it, and the video conferencing portion would primarily to be utilized for business acquisition or business retention would be to use it where it's most convenient for the County Executive to use it because it was our opinion that he's our best salesman. (1/23/04, p. 420)

These purchases amounted to the IDA, with no formal procurement policy, making purchases on behalf of County agencies, thereby circumventing County rules and regulations. The Administration's report succinctly stated the proper procedure: "In the future, the County's

⁴⁰ Comptroller's Report, op cit, p. 26.

⁴¹ Gianelli, op cit, p. 34.

⁴² Comptroller's Report, p. 25..

procurement policies should always be followed if the County is to be a recipient of the goods or services being purchased.”⁴³

Finding 6. County employees served as board members on the independent corporations, creating the appearance of a conflict of interest.

The HUD monitoring reviewed both Kevin Crean’s and Peter Sylver’s roles on the Economic Development Corporation board, a subrecipient of County CDBG funding, and concluded:

Their respective roles within the ED Vertical and OHIA included authority to influence funding decisions and monitor activities, rendering them covered persons pursuant to § 570.611(c). Their presence as members of the NCEDC Board creates an inherent conflict with their fiduciary responsibilities as program officials charged with safeguarding federal funds.

Federal conflict of interest provisions at § 570.611 prohibit covered persons from having a financial interest in or obtaining a benefit from a CDBG-assisted activity. Whereas the presence of these OHIA officials on the NCEDC Board may not in itself constitute a violation of § 570.611 because of the absence of a financial interest, the operational conflict of interest creates at least an appearance of impropriety in having a County official empowered to award funds and exercise oversight over those funds also sit on the board of an entity receiving those funds.⁴⁴

HUD recommends that: “The County should review its procedures for evaluation of conflict of interest and limit the role of any appointed County officials on the boards of subrecipient entities that are awarded grant funds.”

During the hearing Kevin Crean, Technical Director of the OHIA, was questioned about the potential conflict of interest in his being a board member of the EDC:

LEGISLATOR SCHMITT: In April of 2003 the Economic Development Corporation received a Community Block Grant in the amount of \$150,000. Correct?

MR. CREAN: I don’t know about the timing, but I know the amount. Yes.

LEGISLATOR SCHMITT: And in April of 2003 the Economic Development Corporation received a HOME contract in the amount of \$1 million?

MR. CREAN: The amount is correct. Yes.

LEGISLATOR SCHMITT: In September or October of 2003 the Community Development Block Grant contract was amended to authorize up to \$650,000. Is that correct?

MR. CREAN: That’s correct. Yes.

⁴³ Gianelli, op cit p. 34

⁴⁴ HUD monitoring, op cit, pp. 12-13

LEGISLATOR SCHMITT: Did the Economic Development Corporation respond to the Office of Housing and Intergovernmental Affairs request for proposal prior to the issuance of those contracts?

MR. CREAN: I do not believe so. No.

LEGISLATOR SCHMITT: You approved the contracts in your capacity with Office of Housing and Intergovernmental Affairs. Correct?

MR. CREAN: I may have.

LEGISLATOR SCHMITT: You were also an officer with the Economic Development Corporation. Correct?

MR. CREAN: That's correct. Yes.

LEGISLATOR SCHMITT: Didn't you see this as a potential conflict of interest?

MR. CREAN: No, not at the time. I still don't know if it's a conflict.

LEGISLATOR SCHMITT: Did you make any effort to get an opinion or to find out?

MR. CREAN: No, I did not. (2/17/04, pp. 106-108)

Recommendation: The County Charter and/or Administrative Code should be amended to mandate that a County employee must obtain Board of Ethics approval before sitting as a board member of a not-for-profit corporation or public benefit corporation that does business or contracts with the County. The approval should be required regardless of whether monetary compensation is involved, in order to ascertain a potential conflict of interest or the appearance of impropriety.

The Nassau County Comptroller made the recommendation that:

Formal conflict of interest policies should be established by each of the boards of the independent corporations, and all officers, trustees, and/or board members, and policy-making staff employed in these corporations should be required to abide by these policies. These individuals should be required to complete annual disclosure statements describing all their all business holdings and investments. Any of these individuals who have interests in properties or businesses affected or potentially affected by economic development programs should disclose their interests and recuse themselves from the decision-making process to avoid even the appearance of a conflict of interest.⁴⁵

Finding 7. NCPUA has no formal process for awarding contracts to its customers

The Nassau County Public Utility Agency (NCPUA) was established as a County agency by local law in 1984 and approved by a referendum of voters. Its nine-member board is made up of the Chief Deputy County Executive, who serves as chairman, a Deputy County Executive, and the County Attorney, plus three appointees of the County Executive, and three appointees of the Legislature, none of whom receives compensation from NCPUA. As a public utility service it

⁴⁵ Comptroller's Report, op cit, p. 14

can purchase power from various sources and then sell that power “to the eligible consumers of electricity in Nassau County.” The rate it is allowed to charge is intended to be sufficient to cover “all of its costs in furnishing such electric service and that accordingly, the operation of this public utility service will be at no net cost to the agency.” In practice a 4% administrative fee is charged to NCPUA’s customers.

NCPUA’s role in the County’s economic development strategy is to provide energy to businesses at a lower rate than would otherwise be available. It currently provides 5 kilowatts of electricity, the maximum available, to seven customers. Businesses are selected base upon their potential for employment growth and capital expansion. Kathy Todd, the Acting Executive Director and sole employee of NCPUA, was asked how prospective clients are made aware of the availability of this service:

LEGISLATOR MANGANO: Is there a list of companies that are interested in taking advantage of that utility discount? Do you maintain a list of companies interested in taking advantage of -

MS. TODD: Not presently because we haven’t been advertising it since we don’t have any available, and the contracts still have a number of years to run. Unless we can get out of some of those agreements at which time that will be something we would want to look at.

LEGISLATOR MANGANO: Right. You would want to know how a solicitation process or procurement process, but you’re not aware of the exact process.

MS. TODD: In looking back at the records from the previous administration that was not clear. No board minutes survived.

Recommendation: The NCPUA board should establish clear procedures for the notification and selection of future clients, and the contracts should be approved by the Legislature.

Finding 8. NCPUA operates without sufficient internal controls.

The Comptroller’s audit found that:

NCPUA does not maintain basic accounting records, such as a general ledger, general journal, cash receipts book and cash disbursements book. It maintains a checkbook; however, the balance has not been reconciled to the bank back to at least April 2002.⁴⁶

Recommendation: These basic internal controls should be implemented immediately. Just because the agency is not utilizing County tax dollars does not mean it should be exempt from good governmental practices.

Finding 9. NCPUA is a County agency that does not appear in the County budget.

⁴⁶ Comptroller’s Report, op. cit., p. 46.

For years NCPUA has been essentially operating off the radar. If in the future the agency is included in the County budget, there will be greater public awareness of its operations, not to mention its existence. Although NCPUA was not included in the 2005 budget submission, the Administration plans to ask the Legislature to approve a supplemental appropriation for that purpose.

Recommendation: The expenses, staffing and revenue of NCPUA should be presented in the County Budget, and adopted by the Legislature.

Finding 10. Overpayment of Employee.

An issue arose during the hearing concerning the compensation received by Mr. Sylver's Executive Assistant, Stephanie Wargin. Ms. Wargin received both a County salary and a stipend from the IDA. According to her testimony, in September of 2003 she reduced her hours and began to work part-time, from home, so that she could attend graduate school, and did so for about 10 weeks while she re-wrote the County's Economic Development Plan. Payroll records indicate, however, that she continued to be paid her full-time County salary until September 18, and there was no record of any authorized part-time work. Consequently, the County has sent Ms. Wargin a letter, dated May 5, 2004, asking for re-payment of \$2,452.12. This amount was based on total overpayment of \$5,977.02, less termination pay she is owed, and on her final day's work being August 8, 2003, rather than September 18, 2003. No compensation was allowed for the part-time work Ms. Wargin did from home. We have been informed by the County Attorney's office that as of mid-January 2005 this matter has not yet been resolved, but the claim for collection is being pursued.

Ms. Wargin testified that she submitted timesheets during the period she worked at home. Copies of these sheets have been provided to the Committee. They show 93 hours billed at \$25 per hour, covering September 1 through November 7, but they are not on the official County form.

Recommendation: Employees should not be paid without the proper submission of timesheets. The Comptroller needs to audit the timekeeping process County-wide to ensure that this is not a widespread problem.

Section 108 Programs & Community Development Block Grant (CDBG)

The Section 108 Loan came up during questioning of Raffaella Petrasek, Executive Director of the EDC:

LEGISLATOR TOBACK: Okay. What is the 108 loan?

MS. PETRASEK: The 108 loan? The 108 loan is actually part of a larger loan that was approved, I believe it was in October of 2001. It was an \$11,000,000 loan for a project in, I believe, the Village of Hempstead. When the loan was approved by HUD and the funding was drawn down by the County, it was the \$11,000,000. The project only was eligible for \$4,000,000. So it left a

\$6,000,000 balance. That money has been given over to the EDC to use on economic development projects.

There was a resolution passed by the legislature making an amendment to the loan agreement that made those funds available to the EDC. So there's \$6,000,000 of the 108 loan proceeds that is available for economic development projects. I've been trying to identify projects that could handle possibly a second mortgage on the project and maybe in terms of different structures that might be approved by HUD such as a period of interest only and different structures that we might be able to utilize that money. Currently the County is on the hook for paying the debt service for that so my goal is to try to get that money on the street as quickly as possible. (1/26/04, pp. 96-97)

LEGISLATOR TOBACK: And the County's paying the interest on the money, the money must be sitting somewhere, is that money earning interest?

MS. PETRASEK: That money is earning interest. It is sitting in a bank account, I believe, with City National Bank. I don't have the exact information on the banking account but my understanding is that it is sitting in a bank account at City National Bank and it is earning interest and the interest is being used to help pay the debt service. (1/26/04, pp. 97-98)

It should be made clear that while the EDC was eligible to utilize the Section 108 loan proceeds, the control of the funds remained with OHIA. The program is described as follows at the HUD website (www.HUD.gov):

Section 108, the loan guarantee provision of the Community Development Block Grant program, is one of the most potent and important public investment tools that HUD offers to local governments. It allows them to transform a small portion of their CDBG funds into federally guaranteed loans large enough to pursue physical and economic revitalization projects that can renew entire neighborhoods...Section 108 loans are not risk-free, however; local governments borrowing funds guaranteed by Section 108 must pledge their current and future CDBG allocations to cover the loan amount as security for the loan.

Projects eligible for this funding include:

- economic development activities eligible under CDBG;
- acquisition of real property;
- rehabilitation of publicly owned real property;
- housing rehabilitation eligible under CDBG;
- construction, reconstruction, or installation of public facilities (including street, sidewalk, and other site improvements);
- related relocation, clearance, and site improvements;
- payment of interest on the guaranteed loan and issuance costs of public offerings;
- debt service reserves; and

- in limited circumstances, housing construction as part of community economic development, Housing Development Grant, or Nehemiah Housing Opportunity Grant programs.⁴⁷

The maximum repayment period for a Section 108 loan is twenty years. HUD has the ability to structure the principal amortization to match the needs of the project and borrower. Each annual principal amount will have a separate interest rate associated with it.

Rosemary Olsen, Director of OHIA, has informed the Office of Legislative Budget Review that the \$6,050,000 loan has been extended for one year, and that OHIA anticipates submitting projects to the Legislature for approval.

During the hearings questions arose about OHIA's administration of the federal Community Development Block Grant Program (CDBG). On March 22, 2004 the Nassau County Legislature's Budget Review Committee convened a special meeting for the following purposes:

- To allow the committee to gain a better perspective as to how Community Development Block Grant (CDBG) money is currently allocated and distributed among the 31 Consortium members.
- To determine if the process had in any way changed over prior years' procedures.
- To ascertain if the County and Consortium members were cooperatively working toward a common goal.
- To determine if the County was at risk of losing future CDBG monies due to poor spend down practices.

By the time the meeting drew to a close, many of the questions and concerns of the legislators had been addressed with assurances from Deputy County Executive Patrick Duggan that meetings with each Consortium member had been planned for the near future. He also promised and delivered, by letter to Minority Leader Peter Schmitt on July 1, 2004, confirmation that Nassau County had achieved the HUD spend down standard of no more than 1.5 times the annual block grant allocation by June 30, 2004. On that date, Nassau County had 1.48 times their allocation in their line of credit.

County Agencies: Conclusion

One of the major themes that emerged from the hearings and the various investigations into the workings of the Economic Development Vertical was that existing rules and procedures were ignored. For example, if County rules had been followed, the OHIA credit card and checking account would not have been opened and utilized without the knowledge and oversight of the County Treasurer and Comptroller, and OHIA personal services contract reimbursement would not have been disallowed by HUD.

⁴⁷ Community Planning and Development, Section 108 Fact Sheet
<http://www.hud.gov/offices/cpd/communitydevelopment/programs/108/index.cfm>

Recommendation: The County should follow all applicable County, State, and Federal rules and procedures.

At a minimum the County should have been implementing “the main characteristics of internal control” as set forth in the New York State Office of the State Comptroller’s “Procurement and Disbursement Guidelines,” (Bulletin No. G-54 May 29, 1986):

- a. Separation of staff duties.
- b. Written procedures of job descriptions, duties, and responsibilities.
- c. Established levels of authorization.
- d. Accurate record keeping.
- e. Procedures for periodic management review and testing to ensure compliance

The Administration’s “Final Report on the Finances and Operations of Certain Departments, Independent Agencies, and Independent Corporations in the Economic Development Vertical” contains many excellent recommendations that address the managerial and operational problems uncovered in the Vertical (some of which have already been implemented). These include:

OHIA – and all departments, corporations, and agencies in the vertical – should use time sheets that are consistent with the requirements of OMB Circular 87 and allocate employee time worked by (i) agency, department, or corporation within the vertical; and (ii) program within each agency, department, or corporation. OHIA should utilize the Circular and consult with HUD regarding the accounting of indirect costs.

OHIA and all County department personnel responsible for human resources management should receive adequate training in managing employee leave time.

Only employees whose salaries and fringe benefits are fully and exclusively supported by State or Federal grants should be included in the County’s Grant Fund. The full salaries of all County employees whose salaries (i) are partially supported by federal grant funds; or (ii) can be partially charged to other County agencies and corporations should be included in the appropriate department in County’s General Fund budget ... A departmental revenue appropriation should be established to support that portion of the salaries and fringe benefits of County General Fund employees who perform work for or on behalf of other independent entities in the vertical, like the EDC, LDC, and IDA. The County should bill for services performed by its employees on behalf of these entities on a quarterly basis pursuant to agreements established between these entities and the County. These agreements would be subject to the approval of the boards of these entities and the County Legislature.

No employee should have his or her salary and fringe benefit expense split among departments, agencies, and corporations in the vertical. Instead, 100% of the salary and fringe benefit expense of every employee should be budgeted in the department, agency, or corporation for which they perform the majority (more than 50%) of their work. Formal agreements should be established between and

among the County and the agencies and corporations in the vertical which prescribe the basis for mutual chargebacks. Employees who perform general overhead work for the departments or independent entities in the vertical should be budgeted in OHIA in the County's General Fund, with offsetting revenues coming into OHIA from the departments and independent entities in the vertical.

OHIA should strengthen its request for proposal process by widely soliciting competing proposals to provide professional services, having a committee assigned to review and rank each proposal, and providing sufficient time for vendors to develop and submit proposals and for the committee to evaluate them.

The County must codify, in clear and concise language, its policies as related to procurement, meals, travel, conferences, and lodging.

Executive Order No. 3-2004, effective February 1, 2004, created the position of Nassau County Compliance Officer, who:

shall be responsible for the implementation and review of a county-wide internal control program to assure that assets are properly safeguarded and used in a manner consistent with the requirements of law and duly established managerial policies and in an effective, economic and efficient manner ...

...the Compliance Officer shall report annually to the County Executive documenting steps taken to identify and implement new procedures and controls and compliance with such procedures and controls. Such report shall be filed with the Clerk of the Legislature.

Deputy County Executive Helena Williams has been named as the first Compliance Officer. In addition, OHIA has created the position of Executive Director of Operations and Finance to serve as the chief administrative officer for the agency. Robert Shelly, appointed to the position, has prepared a corrective action plan in response to the Comptroller's audit. Karen Kugal, formerly with the County's Department of Personnel, will focus on OHIA's human resource functions and procurements as Deputy Director of Operations.

The other major theme was that clearer lines must be drawn between the County agencies and any independent corporation that becomes a collaborator on economic development issues. See page 58 for recommendations relating to non-County agencies.

The Non-County Agencies

Industrial Development Agency (IDA)

Nassau County's IDA is a public benefit corporation created by state law in 1975. The IDA has a Board of Directors that is currently (January 2005) comprised as follows: Howard Fensterman, Chairman, Gary Weiss, Vice Chairman, John Puckhaber, Treasurer, Mark Goldberg, Assistant Treasurer, Peter Ruffner, Secretary, Erwin Liu, Assistant Secretary. All IDA board members are appointed by the County Executive and confirmed by the Legislature.

To accomplish its mission of promoting economic growth and job creation, the IDA issues bonds, grants tax abatements, provides counseling, and obtains reduced energy rates for eligible projects.

The agency may issue both taxable and tax-exempt bonds to finance projects. Low-cost financing makes it more profitable for businesses to locate in the area. The bonds are backed by both the applicant's credit as well as a bank's letter of credit. The IDA collects fees in consideration for the issuance of bonds. The fees charged are a percentage of the total project cost. These fees are the primary source of revenue for the agency.

To grant tax abatements to companies, the IDA must take title to or a leasehold interest in the companies' property. Title is transferred to the IDA at no charge. The company continues to use and maintain the space. Once the IDA is the owner of record, it may issue tax abatement letters to the company exempting them from payment of sales tax during the period of construction and build up, the mortgage recording tax, and local property taxes. Instead of paying property taxes, the companies make payments in lieu of taxes (PILOT). The amount of the PILOT varies depending on the value of the improvements being made to the property. In almost all cases the PILOT is less than what the real estate taxes would have been on the property. There are a few cases where no improvements are being made to the property and thus the PILOT is equal to what the real estate taxes would have been. The companies sign a PILOT mortgage giving the County the right to foreclose if the PILOT is not received.

Finding 11. The IDA maintained insufficient internal controls.

Comptroller Weitzman's audit of the IDA disclosed, among other things, that:

The IDA showed revenue of \$749,000 in 2003 (11 months), \$537,000 in 2002, \$321,000 in 2001 and \$224,000 in 2000. Revenue has been enhanced through increased activities and fee initiatives in recent years. However, the agency has no comprehensive record of amounts earned or billed.⁴⁸

Despite the State law requirement that the IDA abide by GML 104-b,76 the IDA has no written policies covering the purchasing of goods and services. The current Board, through budget approval, authorizes the Chairman and Executive Director of the IDA to spend within budget limits. Our review of expenditures made by the current IDA, as well as the IDA as it existed under the previous county administration, found instances of spending that were questionable as to necessity and/or procurement process.⁴⁹

The IDA hired consultants without any discernable procurement process and, in some cases, with no contracts. Some of the "consultants" appear to have really

⁴⁸ Comptroller's Report, op cit, p. v.

⁴⁹ Ibid, p. 25

been employees. The IDA may have circumvented IRS regulations by treating the individuals as consultants.⁵⁰

Lew Yevoli, Chairman of the Nassau County Planning Commission, and formerly Mr. Gioino's predecessor as IDA Chairman, addressed in his testimony the operational changes that were needed at the agency and how such changes would come about:

MR. YEVOLI: One of the things that occurred is we basically followed the procedures that were in effect for the prior IDA. The net result of that was that there was no procurement policy in effect and I think quite candidly, I was not aware that a procurement policy was required.

I was told, and I don't know this to be a fact so I can't produce statistics that would back this up, most IDAs in the State of New York do not have procurement policies in effect. However, having said that, the importance of a procurement policy cannot be underestimated and I would strongly recommend – and I know Mr. Gioino is working on it right now – that there be a specific procurement policy in effect for the Nassau County IDA.

But, again, so everyone is clear on that, that policy is established by the IDA board. It would not have to come before this Legislature. Should this Legislature decide that it would like a greater oversight into the IDA or the operations of the IDA, my recommendation would then clearly be that you certainly submit that to the New York State Legislature and see whether or not they would be amenable to changing the oversight. Now that's not to say that there can't be cooperation between the IDA, on a voluntary basis, and the Legislature. I'm sure as a result of this hearing there will be some benefits that come out of this hearing, unquestionably, in my opinion. What I think would happen is that there would be that kind of a voluntarily relationship and that whatever the Legislature would ask of the IDA the IDA, to the best of my knowledge, would be more than willing to provide to the legislative body. (1/23/04, pp. 396-397)

Dan Deegan touched upon this same subject in response to a question from Legislator Toback:

LEGISLATOR TOBACK: With regard to your counsel to the IDA - and I respect your right to say I haven't researched this issue, I don't know – but do you know of any reason in the IDA enabling legislation or in the local IDA Bylaws or Rules and Regulations where the IDA could not voluntarily enter into an agreement with this Rules Committee giving this Rules Committee some oversight on personal service contracts and other – be a part of their procurement process[?]

MR. DEEGAN: Well, I don't know if there's a legal prohibition ... I will tell you that the IDA is created by New York State Statute as a State public benefit corporation ... That does not mean that it does not have the ability to enter into contracts. And one of the suggestions that was made by Mr. Gianelli in his report, which may or may not be a good idea, although I tend to think it is, is to actually memorialize the relationships between these different entities. So rather than separating these entities more, as seems to be the general call up here, it would

⁵⁰ Ibid, p. v.

actually be to solidify the relationships between these by having written documents defining that relationship...

As a practical matter, the way it was happening was by having a single Deputy County Executive and overlapping board members to have these relationships and to having this synergy of people working together. It certainly is a very good suggestion to take it a step farther and making them more cohesive by having documents defining the relationships between them. (1/23/04, pp. 70-73)

The Office of Legislative Budget Review has received a copy of the IDA's new Policies & Procedures manual. The manual details the organizational hierarchy and job duties of all IDA board members and employees, and codifies specific policies and procedures that IDA employees must follow. It is divided into several sections detailing procurement and travel and meal policies. The manual also incorporates copies of the forms which employee or prospective businesses would need to complete. One area not covered in the manual is the codification of the relationship between the County and the IDA. No specific guidelines are detailed governing the usage of County employees' time.

Finding 12. The IDA may have been out of compliance with Section 861 of New York State's General Municipal Law which requires the IDA to submit its proposed budget annually.

Although the 2003 budget was prepared and submitted for review, it is not clear whether a budget had been submitted in prior years. Pursuant to § 861 of New York State's General Municipal Law, the IDA is required to submit its proposed budget annually:

to the chief executive officer and the governing body of the municipality for whose benefit the agency was established and make available for public inspection and comment its proposed budget for the forthcoming fiscal year, no later than twenty business days before adoption. At such time, the agency shall file its proposed budget with the clerk of the municipality for whose benefit the agency was established. Such proposed budget shall contain detailed estimates in writing of the amount of revenues to be received and expenditures to be made during the forthcoming fiscal year. Following its consideration of the comments received, the agency may revise its budget accordingly and shall file the revised budget with the clerk of the municipality.

The IDA had apparently been out of compliance with this law until its 2003 budget was prepared and submitted for review, and adopted by the Board of Directors. The Legislative Clerk received copies of the 2003 and 2004 IDA budgets; but neither one included supporting schedules. Mr. Gioino pointed out how the law provides for the local government's involvement in the budget process:

As a matter of course, 861 of the IDA law requires, as I indicated before, the budget to be sent over. It allows for a period, it has to be done 20 business days for adoption which allows the legislative body, the Chief Executive Officer to comment, it specifically mentions comment, on the budget which I would then take back to my board which they would take under advisement.

There is to some extent an ability for the Legislature to comment or ask more questions prior to the adoption of the budget because I have those 20 days that are required by the law to send it to you ahead of time. (1/23/04, pp. 469-470)

The IDA is also subject to an annual audit, a copy of which must be sent to the State Comptroller:

MR. GIOINO: As a matter of course, the board gets audited by independent auditor every year, we are required to by state law. We send a copy of an independent audit to the Comptroller and to the State as part of our routine required process.

LEGISLATOR TOBACK: And was that done –

MR. GIOINO: That was done every year by the prior board, it's done by the current board, and it did not address – certainly the [Nassau County] Comptroller's audit was much more thorough than the independent auditor. I'm not a CPA so I don't know if that's the standard or procedure, but it was audited yearly, yes. (1/23/04, p. 403)

Additionally, pursuant to § 922 of New York State's General Municipal Law, all of the IDA's "accounts, contracts, books and records shall be subject to audit by the county comptroller." Comptroller Weitzman referred to this in his testimony:

The [Nassau County] Comptroller was given the authority to audit the IDA in 1988 as a result of actions that were taken by then-Comptroller Peter King. There was no audit performed of the IDA from that initial audit in 1988 through this audit that we just performed. (1/21/04, p. 42)

Recommendation Require that the EDV entities provide a semi-annual or year-end report to the Legislature, OLBR, and the Comptroller summarizing the entities' activities for the six-month period or year, including projects, contracts, revenue, expenses, etc. In addition, make a formal request that the IDA legislation (which is state legislation), be amended to add a reporting requirement by the Nassau County IDA to the Nassau County Legislature.

Whether or not the County formalizes its relationship with the IDA, there has been interest shown in Albany to reform the operations of all of New York's public benefit corporations. In February of 2004 the New York State Comptroller's office released a report entitled Public Authority Reform: Reining in New York's Secret Government, which detailed the history, functions and oversight of Public Authorities in New York State. It also described the Comptroller's proposed Public Authority Reform Act of 2004. The Act categorized all public authorities into one of four classes. The Nassau County IDA would have been included in Class C, entities with local jurisdiction.

The aim of the legislation, was to "increase accountability, deter misconduct and reduce waste and inefficiency at the more than 640 State and local public authorities and subsidiary corporations operating in New York."⁵¹ To do so it would have established a comprehensive listing of all the State's Public Authorities, and require that such authorities:

⁵¹ New York State, Office of the State Comptroller, Office of Budget and Policy Analysis, Public Authority Reform: Reining in New York's Secret Government", February 2004, p.45

- appoint independent Board Members,
- establish committees of board members on procurement policy, employment and compensation,
- rotate auditors,
- have their annual financial statements and statutorily required reports certified by the CEO and CFO,
- have their contracts pre-audited by the State Comptroller before they become effective, and
- designate a procurement officer trained in good procurement practices.

In addition the employment of lobbyists for fees would be prohibited, and limitations would be placed on an Authority's ability to issue debt or lengthen the terms of existing debt obligations without an act of the legislature.

The Comptroller's legislation failed in both houses of the state legislature. Other reform bills were unsuccessfully introduced by various legislators. The Office of Legislative Budget Review has been informed by Doug Forand, the Director of Intergovernmental Affairs for the Comptroller's Office, that in 2005 they hope to introduce a compromise bill which incorporates items from all of the reform bills.

Had rules such as these been in place, perhaps the IDA would have avoided the types of operational shortcomings disclosed in the County Comptroller's audit and the legislative hearings. Instead it was caught up in the same casual intermingling of resources that was seen throughout the EDV, examples of which will be discussed below.

The IDA has its own checking account that previously had a debit card attached to it. The card was issued to Nassau County IDA from the State Bank of Long Island. Joseph Gioino and Gerri Ann Palermo were authorized signors on the debit card. There were six purchases made on the card. The purchases were for office supplies as well as group memberships. The card was cancelled on December 1, 2003. This checking account was used to cover such IDA expenses as legal bills, furniture, and business galas.

The IDA checking account was used to reimburse Peter Sylver a total of \$3,462 for the expenses that he and his wife incurred on their June 2002 trip to London,. He attended a criminal justice seminar there and was reimbursed by the Nassau County IDA for two round trip airline tickets as well as a seven hotel night stays, June 16, 2002 through June 23, 2002.

Reimbursement for lodging that took place after the seminar was over and for airfare for his spouse is not allowable under several policies. As per OMB circular A-87, section g, paragraph 18, costs of entertainment including lodging are not reimbursable. Since the seminar only lasted from June 18, 2002 through June 20, 2002, the final three lodging nights were not eligible since Peter Sylver and his wife were there for entertainment purposes. Moreover, as per New York State Comptroller's Opinion 92-51, IDA's may not reimburse members of the agency or its executive director for the travel expenses incurred by the spouses of a member or the executive director. Additionally, the travel reimbursement policy for Nassau County Employees stipulates that only those expenses incurred by the County employee are eligible for reimbursement from the County.

The IDA reimbursed Peter Sylver for his expenses and in turn the IDA was supposed to be reimbursed from County OHIA grant funds. A Nassau County Travel Authorization Request was completed on July 1, 2002. The approval signature on the request appears to be that of Robin Pelligrini, Mr. Sylver's subordinate through mid-year 2002. Ms. Pellegrini testified that she did not sign the form.

LEGISLATOR DENENBERG: So you never knew about this document containing what appeared to be your signature, even though you didn't sign it, until after your employment was terminated?

MS. PELLEGRINI: I didn't know anything about it until I read the Naughton report. I read the Naughton report on Newsday. I downloaded and read that whole thing.

LEGISLATOR DENENBERG: That's just a few weeks ago you're talking about. Correct?

MS. PELLEGRINI: Yeah, and I said what document is this? I asked for a copy of it and I was like, I never did this.

LEGISLATOR DENENBERG: You don't know who signed your name to this?

MS. PELLEGRINI: No.

LEGISLATOR DENENBERG: Were you ever asked to sign a voucher for the infamous London trip?

MS. PELLEGRINI: No.

LEGISLATOR DENENBERG: Were you ever asked to sign a voucher for any of Mr. Sylver's expenses?

MS. PELLEGRINI: No. (2/9/04, pp. 38-39)

The IDA never received reimbursement from OHIA, and for that reason when Peter Sylver elected to pay back the full cost of the conference, he wrote a check to the IDA.

Sports, Entertainment and Tourism Association (SET)

The investigations into the workings of the EDV under Peter Sylver that were conducted by the Office of Legislative Budget Review and Mr. Gianelli, and the audit of the Comptroller, did not include SET.

The Nassau County Sports, Entertainment and Tourism Association (SET) appears to have evolved out of the Nassau County Industrial Development Agency, where several of its employees, including Stuart Held, Director of Programming, were originally employed. Joseph Gioino, Executive Director of the IDA, testified that it was his understanding that these individuals "would be operating out of the IDA until they could be self-sufficient," (2/23/04 p. 70) and that the work they performed for SET was justified under the IDA statute. The purposes and powers of an industrial development agency are set forth in § 858 of the New York State

General Municipal Law, which states, “The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities including industrial pollution control facilities, educational or cultural facilities.”

Mr. Held described the uncertain circumstances of the agency’s development:

SET has been in a state of flux from the first day I got here because there were a lot of opportunities for the County in which to improve and do things with them. We didn’t quite know, well the people up here didn’t quite know what they wanted to do, if they wanted to form a 501(c)(3) or if they wanted to have it as a agency or have it back as a 501(c)(3) or whatever it might be. (2/17/04, pp. 162-163)

The Nassau County Sports, Entertainment & Tourism Association, Inc., was established in June of 2002 as a Type C not-for-profit corporation. Pursuant to § 201 of New York State’s Not-For-Profit Corporation Law, “A not-for-profit corporation of this type may be formed for any lawful business purpose to achieve a lawful public or quasi-public objective.” The purposes for which the corporation was formed were stated as follows:

To benefit, promote, accomplish and further economic, business and job development (while lessening the burdens of government) within the County of Nassau, New York, by such varied means as, (i) bringing sporting and entertainment venues to the County and attracting popular entertainment performers and popular sporting events to such venues; (ii) supporting the County’s existing entertainment and sporting venues and existing professional sports teams; (iii) setting-up and/or promoting tourism and tourist destinations within the County; and (iv) bringing and/or supporting popular entertainment events, fairs and celebrations to and within the County.

The “public or quasi public objective” of its formation was, “To improve the quality of life and standard of living of Nassau County, New York’s children, adult and elderly residents by improving economic conditions within the County of Nassau.”

SET is probably most well known for its Horses of a Different Color promotion in which sponsors were charged \$4,000 to have a fiberglass horse creatively painted. The horses, a reminder of Nassau’s involvement in breeding and racing, were then displayed around the County, and made available for purchase for \$3,500. If the sponsor did not choose to buy the horse, it was auctioned off. As of April 1, 2004, the program had netted \$96,929, not including the costs related to moving the horses around Nassau.⁵² This amount was far less than originally anticipated. Other programs with SET involvement include Nassau County’s Caribbean Day Parade, the Long Island Gold Classic, the Concerts in the Parks series, and various amateur athletic competitions.

⁵² Searcey, Dionne, “Too few ponied up for horses,” Newsday, April 1, 2004.

According to the Certificate of Incorporation, filed June 21, 2002 with the New York State Department of State, the original board consisted of Peter Sylver, Michael Hollander, Executive Director of the Long Island Convention and Visitors Bureau and Sports Commission, Susan Marenoff, the General Manager of the New York Power, Dr. Gary Wadler, President of the Nassau County Sports Commission, and Matthew Schectner, a sports promoter. Mr. Sylver served as President and Chairman of the Board. A Certificate of Correction, filed August 2, 2002, replaced board members Michael Hollander and Susan Marenoff with Peter Gerbasi, Commissioner of the Nassau County Public Works Department, and Ian Siegal, Director of the Nassau County Office of Constituent Affairs. Dr. Wadler and Matthew Schectner were removed from the board. [We have been informed by Dr. Wadler that he was not aware of either his appointment to or his removal from the SET board until he read this report, and that he did not participate in any way in the corporation's activities. See appendix.] The Nassau County Sports, Entertainment & Tourism Association's Corporate Resolution #3c, approved on April 10, 2003, authorized "the appointment of the Nassau County Deputy Commissioner County Executive for Economic Development, Nassau County Commissioner of Public Works, and the Nassau County Director of Constituent Services, as 'ex-officio' corporate members and directors."

On July 12, 2002, between the date of the original incorporation and the filing of the certificate of correction, then Deputy County Executive Peter Sylver sent a letter to Minority Leader Peter Schmitt, inviting him "or a designee from the Nassau County Legislature (to be determined by yourself and Presiding Officer Judy Jacobs) to sit on the Board of Directors of our newly formed 501(c)(3), the Sports, Entertainment and Tourism Commission (SET)." The first meeting was scheduled for July 19. In his response, dated September 13, 2002, Minority Leader Schmitt named as his designee Minority Counsel Michael Deegan, and asked to be informed of when the next meeting would be held. He also requested "the SET Bylaws, the names of the officers and directors, the employment agreements, the SET Budget, the agreement between SET and Nassau County, the certificate of incorporation and the IRS approval of SET's application for 501(c)(3) status."

Another Certificate of Amendment, dated August 11, 2003 redefined SET's purposes and changed its corporate type, from C to B. Under state law, a type B not-for-profit corporation "may be formed for any one or more of the following non-business purposes: charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals." The purposes of the corporation as amended are:

To engage in, benefit, promote, accomplish and further economic and community development (while simultaneously lessening the burdens of government) within Nassau County, New York, by such varied means as, (i) improving and maintaining public cultural, recreational and historic facilities and locations within Nassau County; (ii) fostering and supporting local, national, and international amateur sporting competitions and related events at various locations within Nassau County; (iii) informing the general public on the many recreational, cultural and historic programs, activities and facilities available throughout Nassau County; (iv) fostering tourism throughout Nassau County by informing visitors to Nassau County as to the extensive programs, events, fairs and celebrations available within Nassau County; and (v) informing and assisting other charitable organizations on the many recreational, cultural and historic facilities and locations within Nassau County available to assist them in realizing their intended charitable purpose.

In addition, the paragraph describing the corporation's public or quasi public objective was deleted. According to Executive Director Beth Warren, who was not asked to testify at the Rules committee hearing, but who did respond to questions from the Office of Legislative Budget Review as this report was being prepared, "The change from type C to type B was to increase the likelihood of being granted tax-exempt status by the IRS. The change in organizational purposes was done for the same reason."

SET applied, on September 30, 2003, to the Internal Revenue Service for exemption from Federal income tax under IRS Code 501(c)(3). IRS Publication 4220, Applying For 501(c)(3) Tax-Exempt Status, describes the benefits of having such status:

Individual and corporate donors are more likely to support organizations with 501(c)(3) status because their donations can be tax deductible. Recognition of exemption under (c)(3) of the IRC assures foundations and other grant-making institutions that they are issuing grants or sponsorships to permitted beneficiaries.

Peter Sylver sent a letter to Peter Schmitt dated November 19, 2002, apologizing for the delay in providing the information requested, and informing him that: "After many discussions we have decided to organize the group as a traditional unit of our existing Nassau County Agency System. The plan to organize SET has been tabled." Minority Leader Schmitt summarized these events as follows:

LEGISLATOR SCHMITT: Okay. So we now have here in spite of my request to the Deputy County Executive in charge of the whole Vertical that I be informed of meetings - I was not; that I be given a set of the bylaws - I was not; and then I have this letter here November 19, 2002 where Mr. Sylver indicates that they are not going to organize SET as a 501(c)(3). (2/17/04, 196-197)

In an ad for a gala dinner and preview of the Henrietta Marie exhibit at the African American Museum that was held on October 26, 2002, SET was falsely described as "a tax-deductible not-for-profit organization." Hearing exhibit EEE includes a copy of the IRS form 1023 (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code), filed for SET, signed by Peter Sylver and dated 9/28/03. The application was approved subsequent to the conclusion of the hearings.

Mr. Held's testimony depicted the current configuration of SET as being made up of two components: the 501(c)(3) corporate entity, with Beth Warren as Executive Director and sole employee, hired October 2003, and the County portion, which reports to Deputy County Executive Michael Klein in the Parks, Public Works and Partnerships Vertical. The goal of SET to become a self-supporting agency was never realized, as the three County SET employees have, until recently, been on the Budget Office's payroll (they are now part of the Parks Department). The transfer of personnel from IDA to OMB occurred in November of 2002. Ms. Warren, in her response to OLBR, dated July 7, 2004, described the existing organization of SET as follows:

Today, SET is an independent, free standing not-for-profit corporation. While the Chairman of the Board and two board members are currently members of the administration, 5 additional board members have been added to the board. They are Frank Castagna, Howard Kahn, Robert Lemle, Howard Maier and David

Manko. In the very near future it is the intention of the corporation to convert the seats of the county employees to ex-officio positions and to elect the leadership from among the independent members.

While it is true that Stuart Held testified at the hearings that there were two “SETs” – one an independent not-for-profit and one a “unit” in the Parks Department, it is inaccurate to now say that there are two “SETs” operating in Nassau County. Rather, there are three County employees at the Parks Department who are Community Service Representatives who work on Parks Department special events. They are not employees of SET in any formal or informal sense. Instead, they may on occasion work with SET just as they may work with any community group active in the County’s Parks.

During the hearing there were various questions raised about a \$200,000 loan that SET was supposed to have received from the EDC or the LDC. In its application for 501(c)(3) status, SET listed as one of its principal sources of financial support:

A \$200,000 loan from Nassau County, made through its local development corporation (that is, The Nassau County Economic Development Corporation), to help finance the Corporation’s considerable start-up costs and expenses. Said loan shall be repaid by the Corporation, from monies generated by its above described activities.

Mr. Held was asked about this loan:

CHAIRWOMAN JACOBS: Are you aware of a \$200,000 loan from the LDC, the Local Development Corporation, to SET?

MR. HELD: \$200,000 loan? No.

CHAIRWOMAN JACOBS: Okay. All these other questions about the loan then are out of – you have no idea about a \$200,000 loan.

MR. HELD: I would have loved to have seen it. (2/17/04, pp.169-170)

In a letter to the Presiding Officer, responding to a question about the supposed loan, Beth Warren wrote, “SET did not receive a \$200,000 loan from the Nassau County EDC or the Nassau County LDC.”

The Crowe Deegan firm performed various legal services on behalf of SET, including the filing of the certificate of incorporation and the drafting of bylaws. During June of 2002 the firm also prepared a draft agreement that would formalize the relationship between the County and SET. This was to be a public/private partnership in which SET would educate the public and recommend actions to be taken by the County that would accomplish the County’s goal to “Improve, maintain, promote and support its public recreational facilities, sporting facilities (and teams), tourism destinations and entertainment venues; attract, promote and/or sponsor premier sporting and entertainment programs and events, public fairs and celebrations; foster tourism throughout the County by educating visitors to the County as to the extensive programs, events, fairs, and celebrations available within the County; and facilitate and generate economic development associated with the sports, entertainment and tourism industries.” To go forward, a project would have to be approved by the County Legislature. Any revenues generated and paid to the County as a result of these “Approved SET Services” would be used to compensate SET

“so as to allow for the payment of its operating costs and expenses.” SET was to have employed, at its cost, a qualified staff. SET could also pursue activities not related to the County’s goal activities, and these would not require legislative approval. This contract was never executed.

Mr. Held provided some interesting testimony regarding SET’s accounts payable with Crowe Deegan:

LEGISLATOR SCHMITT: Since its inception, since the inception of Sports, Entertainment and Tourism Commission, do you know how much Crowe Deegan has charged for legal services?

MR. HELD: Approximately \$30,000.

LEGISLATOR SCHMITT: Invoice 13677, dated 4-2-03 is for \$35,317.17; and Invoice 13997, dated 8-21-03 is for \$6,579.80. That would be 41, almost 42,000?

MR. HELD: I talked to Crowe Deegan at the time and negotiated down to about 25,000 or 29,000.

LEGISLATOR SCHMITT: Really?

MR. HELD: Yeah.

LEGISLATOR SCHMITT: Where did the other money go?

MR. HELD: We didn’t pay it. We only paid \$10,000 of it.

LEGISLATOR SCHMITT: Crowe Deegan billed the entity for \$42,000 and you paid 10,000?

MR. HELD: That’s correct.

LEGISLATOR SCHMITT: And Crowe Deegan never corrected its bills?

MR. HELD: I guess not.

LEGISLATOR SCHMITT: To your knowledge is there any money due and owing to Crowe Deegan?

MR. HELD: I don’t know.

LEGISLATOR SCHMITT: Why would they reduce their bill from 45,000 to \$10,000?

MR. HELD: When I took on the Tall Ships we had an outstanding bill of almost \$500,000, and I negotiated it down to \$125,000. In effect, I went over to you and I would say very simply we’re just not going to pay it. I would give you reasons for it, and I would tell you what I could pay.

LEGISLATOR SCHMITT: Did you think the charges were too high?

MR. HELD: Yes.

LEGISLATOR SCHMITT: Do you think they were charging for work not performed?

MR. HELD: No. I’m sure they performed the work...

LEGISLATOR SCHMITT: Why wouldn't they just say pay it or I'll sue you? Why would they walk away from 35,000? I'm sure you're a very persuasive man, but why would they walk away from 35,000?

MR. HELD: As I said, and I believe we got the bill down to 25,000 and I paid 10,000 of it.

LEGISLATOR SCHMITT: Who paid the other 15?

MR. HELD: We haven't paid the other 15. Whether that's due, I'm not sure.

LEGISLATOR SCHMITT: So they billed the Sports, Entertainment Commission for approximately 45,000, you negotiated it down to 35,000?

MR. HELD: 25,000.

LEGISLATOR SCHMITT: 25,000. A \$20,000 reduction. So after they negotiated down their bill by almost 50 percent and you owed 25,000 you then, as at the Sports, Entertainment Commission turned around and paid less than half of that?

MR. HELD: Yes.

LEGISLATOR SCHMITT: And nobody's audited, reviewed, looked, sued, demanded? I would think Mr. Deegan as the senior partner has a fiduciary responsibility to his partners. How can you walk away from \$35,000? Explain it to me.

MR. HELD: Ask Mr. Deegan. (2/17/04, pp. 260-263)

Testimony at the hearings revealed that SET did not have a credit card, but it did utilize a checking account which was approved by the Board of Directors in October 2002. It is not clear why but the monthly statement for the account was sent to the attention of John Macari, Deputy County Treasurer. Checks drawn on the account up to \$5,000 had to be signed by the corporation's Treasurer, and those over \$5,000 required the signatures of the Chairman and the Treasurer. A policy was established, by corporate resolution, that expenses up to \$500 per month may be approved by the Executive Director; expenses between \$501 and \$5,000, must be approved by either the Treasurer or the Chairman; expenditures over \$5,000 must be approved by the chairman and ratified by the Board of Directors at the next meeting. The corporation also authorized the payment of all start-up costs, including accounting and legal services, and prospectively authorized the issuance of RFP's for various professional services.

At the end of July 2004, the County was informed by Executive Director Beth Warren that SET would be dissolved as a corporate entity and that she was resigning. Current SET projects will be transitioned to the Parks Department. When needed, future assistance in promoting events will be provided by Friends of Nassau Recreation, Inc. A review of the practices and procedures governing the County's relationship with this organization is being conducted.

Nassau County Local Development Corporation (LDC)

The Nassau County Local Development Corporation was established in 1976 as a Type C corporation under section 201 of New York State's Not-For-Profit Corporate Law. It had been

inactive from the time of its last board meeting in December of 1997 until the Suozzi administration began efforts to resurrect it. The corporation is responsible for the stimulation of the economic growth of the community. The Certificate of Incorporation states that the Corporation has been formed “to plan and promote and if necessary to coordinate and execute programs in the County of Nassau aimed at improving the quality of life of its residents by developing new approaches and methods where necessary and proper.”

Under the Certificate of Incorporation, the LDC is also authorized to achieve certain educational and charitable objectives and public purposes of relieving and reducing adult unemployment, bettering and maintaining adult job opportunities within Nassau by the following:

- a) residential rehabilitation and development;
- b) developing operating and maintaining commercial and recreational facilities;
- c) constructing, acquiring, rehabilitating and improving for use by other industrial or manufacturing plants;
- d) assisting financially in such construction, acquisition, rehabilitation and improvement and maintaining such plants for others;
- e) obtaining municipal improvements and improved transportation services;
- f) providing managerial, technical, administrative advice, counseling and training and financial aid to assist residents of the county to develop necessary business skills and other business enterprises;
- g) exercising all other powers pursuant to Section 1411 of the Not-For-Profit Corporate Law.

In the past, the LDC had functioned principally as a conduit to financial assistance from the New York Job Development Authority (JDA) for loans to small businesses or small business owners for the build-out, lease or purchase of real estate to be used as business facilities. The lending ratios on LDC loans are 50% from the private lender, 40% from the LDC and 10% equity from the borrower. The 40% of loan funds coming from the LDC is the portion of funds from the JDA that pass through to the LDC. The JDA provides this portion of funds, holds the promissory note and takes the mortgage. There are two types of JDA loan transactions, 1) loans for land and buildings and 2) loans for machinery. In 1976 the JDA was consolidated into the Empire State Development Corporation.

With the reintroduction of the LDC, a meeting had been held on December 2, 2002 to accept five more individuals as members and trustees of the corporation. The three current members, William Bruno, Steve Latham, and Ed Ward unanimously accepted the applications of Lou Yevoli, Peter Sylver, Joseph Gioino, Dave Mejias and JoAnne Taormina.

At the meeting held on April 1, 2003, resolutions were offered and accepted for the movement of funds from the CD with Chase Bank into a money market account; the engagement of an executive Director to handle banking and administrative matters; authorization of payment of legal fees to Crowe, Deegan, Dickson & Benrubi LLP; and the designation of Peter Sylver as Chairman and President of the LDC with the authority to conduct the affairs of the corporation.

Finally at this meeting it was agreed that Joe Gioino would explore funding options and authorized incentives.

Prior to reformation of the corporation, the money managed by the LDC had originally been placed in six month Certificates of Deposits with Chase Bank. The CD maintained a balance of \$83,079 in 2002. Along with the CD's, there had been a money market account with Chase Bank which maintained a balance of \$2,747.84 as of January 2003.

As of April 7, 2003, the last CD matured and the funds were transferred to a newly opened money market account for the LDC with City National Bank. This transfer was authorized and approved by the board under resolution #2a at a meeting held on April 1, 2003. Although the Comptroller's Report has pointed out "this resolution is unnumbered, unsigned and undated."⁵³ An initial deposit of \$86,395.55 was made from the Chase checking account.

Peter Sylver's signature is listed as the only authorized individual on the account's application. Since the creation of the money market account, Peter Sylver wrote five checks against the account. In April 2003, \$12,556 was withdrawn to pay Crowe, Deegan, Dickson & Benrubi, LLP for their legal services provided to the LDC. The services rendered were for the reformation and operation of the LDC. In October 2003, \$9,000 had been withdrawn to pay 30fps Productions, Inc. for a video project to promote I-park (a major new biotechnical center in Nassau County). In September, \$7,000 had been withdrawn for the HEVN program (Helping End Violence Now, Inc). In October 2003, \$525 was withdrawn for All American Glass and Shower Door for the purchase of 12'X4' clear glass. Finally, in November 2003, \$4,426 had been withdrawn for payment to Corporate Interior Solutions for furniture in Peter Sylver's office.

The current account balance, including interest accrued, is approximately \$53,000, but this amount may be further reduced, as pointed out in the Administration's report:

In addition to these disbursements, there appear to be two potential liabilities that the LDC has incurred since it was re-activated in December of 2002. Julian Reilly was verbally engaged by Peter Sylver in his capacity as President and Chief Executive Officer of the LDC to support the coordination of a potential Dr. Martin Luther King Day celebration. This celebration has been cancelled, but Mr. Reilly may submit a claim for up to \$5,000 for services he provided during the planning stages of the event. Additionally, Peter Sylver, as President and Chief Executive Officer of the LDC, may have verbally engaged the Odyssey Media Group, a Florida-based company, to produce an infomercial promoting economic development in Nassau County. Though it is not yet determined whether or not Odyssey Media Group will invoice the LDC, it is estimated that the liability could be as much as \$18,000.⁵⁴

Regarding these liabilities, we have been informed by Robert Shelly, OHIA's Executive Director of Operations and Finance that:

⁵³ Comptroller's Report, op cit, p22

⁵⁴ Gianelli, op cit, p. 43.

A. As of this date [January 7, 2005, we are not aware of any claim having been submitted by Mr. Reilly related to the cancelled event. However, the LDC at its next Board Meeting will have to address the potential liability.

B. With respect to Odyssey Media, Kevin Walsh (Deputy County Attorney) informed us that Peter Sylver signed a "Production Authorization" on behalf of the LDC on Sept. 23, 2003 which includes a production and scheduling fee of \$17,500.00 and a location fee of \$2,000.00. An invoice was received on April 2, 2004 for 50% deposit and location fee (total \$10,750.00). To the best of my knowledge, no payment has been made.

Kevin Walsh received a call from Mr. Robert Danoff of Odyssey Media late last week and Mr. Danoff stated that they will be sending out a letter to Patrick Duggan, DCE discussing a possible settlement of the matter.

The Odyssey Media issue and potential liability in general and the letter, if ultimately received, will also need to be addressed by the LDC Board at its next meeting.

Our plan is to schedule the next LDC Board Meeting to take place within the next 4 weeks.

Aside from the four resolutions accepted on April 1, 2003 there does not appear to have been any further activity or meetings of the LDC. According to Joe Gioino, there currently are no plans for the corporation or for the funds sitting in the money market account.

Obtaining access to the funds in the certificate of deposit seems to have been the sole motivation in resurrecting the LDC. Testimony was elicited from Dan Deegan on this subject:

At some point during 2002, the Administration discovered that there were several files in storage that contained records of a local development corporation.

It was determined that this LDC was incorporated in 1976 and had been dormant since its last Board of Directors meeting in 1997. The LDC's general purpose is to encourage and facilitate the creation and recruitment of jobs to Nassau County. Despite the fact that it had been dormant for five years, it was discovered that it did possess approximately \$85,000 in funds that were held in a bank certificate of deposit, a CD that would roll-over form year to year. That was the extent of the activity of the LDC.

At the direction of OHIA, in particular, Deputy County Executive [Sylver], this firm was asked to review all existing files and records to determine the status of the LDC, and to assist the County in reactivating the LDC in order to access the dormant funds which could then be utilized in the County's economic development efforts.

It was discovered that the LDC Board had been non-functioning since 1997. Many of its board members had retired, resigned or were deceased. Because of this fact, OHIA directed that the firm help to develop a new board for the LDC in order to ensure that the funds in its possession were used in furtherance of the County's economic development programs and not just abandoned in the file box. (1/23/04, pp. 45-46)

The purpose of the actions that were taken were in order to reconstitute the board so that the money could be accessed and spent in furtherance of economic development activities and, ultimately, the strategy was, and it's not my strategy but I'll give it for the sake of context, was to spend the money down on approved items and abandon the LDC.

What happened was it had been abandoned with \$85,000 in it. It should have been abandoned but it should have had its money rather than sitting there abandoned to either go back to the state or disappear into the abyss, it should have been spent for legitimate economic development purposes (1/23/04, p. 220)

It was believed that the LDC's funds would revert to the state, not to the County, if the corporation were to be dissolved.

MR. GIOINO: I know there was an issue with dissolving the LDC and starting anew. The issue was, I believe, because it was related to job development authority dollars or grants or something along those lines that the money would have to go back to the state, and there would be no use for the county –

LEGISLATOR SCHMITT: The money, you mean the \$85,000 or \$83,000, whatever it was?

MR. GIOINO: Whatever money that was in the account would be dissolved if it was dissolved.

There was another mechanism that was very labor intensive by virtue of counsel that would have to go to a judge that may be able to amend that or not to do that. I don't recall what it was. (2/23/04, pp. 138-139)

Mr. Gioino stated that the goal of reconstituting the LDC was to “utilize the money in the LDC to capitalize the EDC.” (2/23/04, p. 126).

To whatever extent the LDC continues to function as an independent corporation, it should adopt procedures to insure internal control over its operations. The Comptroller pointed out the lack of such guidelines in his report

Policies and procedures have not been put into place for internal control of corporate purchases. These policies should include: prior approval and authorization; evidence of review; evidence of receipt of goods/services; and an indication of payment.

While the IDA requires checks over \$5,000 to have two signatures, the LDC does not. If any officer of the corporation benefits indirectly/ directly from a purchase he/she should not provide the lone approval for its purchase. Corporations should maintain basic accounting records, such as a general ledger, general journal, and cash receipts and disbursements books. The LDC does not maintain such records.⁵⁵

⁵⁵ Comptroller's Report, op cit, p 22

Nassau County Economic Development Corporation

The Economic Development Corporation (EDC) is a not-for-profit local development corporation established in January of 2003. Its purposes, as described in its certificate of incorporation, are:

- i. relieving and reducing adult unemployment;
- ii. promoting, facilitating and providing for additional and maximum adult employment;
- iii. bettering and maintaining adult job opportunities;
- iv. instructing or training individuals to improve or develop their capabilities for such jobs;
- v. carrying on scientific research for the purpose of aiding Nassau County by attracting new industry to Nassau County or by encouraging the development, or retention, of industry in Nassau County, and
- vi. lessening the burdens of government and acting in the public interest.

The corporation, a sub-recipient under the HUD Community development block grant, is 100% federally funded. For the 28th program year, the corporation has been allocated \$650,000 in CDBG funds and up to \$1 million in HOME funds, which can be used to acquire and develop properties and communities. Through August 31, 2004, the EDC drew down \$296,396.78 in funds against its two federal grants. The EDC also has available to it the remaining Section 108 loan funding. (See p. 32)

Peter Sylver resigned as Chairman of the EDC board of directors effective December 1, 2003.

The Administration's report summarized the corporation's work as follows:

The EDC is presently working with various local organizations and municipalities on projects to revitalize downtowns (particularly in impacted areas), create affordable housing opportunities, and promote "walkable" communities. Among these projects are ten active development proposals, two property acquisitions, and five opportunities to provide financial assistance and other economic development incentives. For the most part, all of these projects are in initial or start-up stages, with the notable exceptions being the New Cassel redevelopment effort and the Long Island BioPartners initiative.⁵⁶

The EDC staff consisted of two employees: Raffaella Petrasek, Executive Director, and Deidra Parrish-Williams, Director of Communications, Project Manager. The payroll time sheets were authorized by Peter Sylver and Kevin Crean. Signatories for the payroll checking account were Peter Sylver, Joe Gioino and Kevin Crean. Shirley Dews is a County employee who worked with EDC by submitting their vouchers for payment. Some of the EDC projects are in collaboration with OHIA, which receives no reimbursement for employee salaries from EDC.

⁵⁶ Gianelli, op cit, pp. 49-50.

Although she did use the unauthorized OHIA credit card, the monthly statements were sent to the attention of Raffaella Petrasek, who passed them on to Shirley Dews of OHIA. The EDC had no other involvement with the card.

The Comptroller's audit revealed that the EDC "does not maintain basic accounting records and no interim financial statements have been prepared."⁵⁷ The EDC's checking account was used to circumvent the proper procedures to pay \$3,431 for compensation due to two seasonal employees. Both employees worked for OHIA but were not on the County payroll. The employees' checks were signed by both Joseph Gioino and Kevin Crean. These funds were later reimbursed by OHIA.

The HUD monitoring also disallowed reimbursement for EDC expenses in the amount of \$148,759.68 for "legal services, appraisal services, audit services and other professional services that were subject to federal procurement requirements."⁵⁸ As was previously mentioned, the legal services were provided by Crowe Deegan at a cost of \$65,686.25. On this issue, the County responded to HUD as follows:

The OHIA requested Crowe Deegan to assist in the initial formation of the EDC and, after the EDC's formation, to provide the EDC with corporate law services and project-specific legal services. Because the EDC was not yet formed, there was no way for the EDC to issue an RFP. Legal services provided were to be billed to the EDC pending EDC capitalization and appropriate Board authorization. This is the customary practice of an entity that has yet to be established. Indeed, this was acknowledged when, at its March 14, 2003 public meeting, the EDC Board approved a resolution authorizing the EDC President to retain legal counsel pending issuance of a formal RFP.

Therefore, because the EDC had yet to be formed when Crowe Deegan was asked to create and perform legal services for the EDC, and because the EDC Board authorized the retention of legal services pending the issuance of a formal RFP, Crowe Deegan's retention by the EDC was proper.⁵⁹

The findings that follow have been taken from the Administration's report:

Finding 13. The EDC does not have written agreements with any of its professional service vendors.

Finding 14. The EDC has not adopted a competitive procurement policy.

Finding 15. The EDC does not have a formal policy governing meals, travel, conferences, and hotel stays.

Finding 16. The EDC did not competitively procure any of its professional services, and the EDC board of directors did not make a sole source finding for any of its professional service vendors.

⁵⁷ Comptroller's Report, op cit, p. 25

⁵⁸ HUD monitoring, op cit, p. 13

⁵⁹ Nassau County Response to HUD, op cit, pp. 22-23

Finding 17. Peter Sylver was the Chairman of the EDC, yet he executed the subrecipient contracts with the EDC on behalf of the County in his capacity as Deputy County Executive.

Finding 18. Beyond its subrecipient grants, the EDC has not entered into a formal contractual relationship with the County, nor has it entered into formal contractual relationships, as needed, with any of the other independent agencies or corporations within the Economic Development vertical.

Finding 19. The EDC does not have a means of documenting the allocation of staff time to specific projects or, in some instances, to work done on behalf of other agencies, corporations, or departments within the Economic Development vertical.

Finding 20. The EDC does not have an internal control mechanism that insures – or tests for – the compliance of EDC expenditures with applicable laws and regulations.

One piece of unfinished business for the EDC was the negotiation of a formal contractual agreement with County. Ms. Petrasek sketched out in her testimony what this might have looked like

The EDC hasn't generated any revenue since its inception. Really, we have no assets. There's no property that's owned by the EDC or even managed by the EDC at this point in time. The goal is for the organization to be able to generate income.

One of the ways that we were hoping that we could do that was to structure a relationship with the County where we would be able to dispose of County assets, possibly share in some of those proceeds, and those are the types of issues and mechanisms that need to be worked out in the County contract.

My experience again, not sort of reaching back to New York City Economic Development Corporation but it really is a source of a lot of the ideas that I have based on my experience there. The organization when it was first started, one of the structures was for the City to dispose of property at a discount to the New York City Economic Development Corporation and then the Economic Development Corporation to sell those properties for fair market value and that Delta was what would be retained by the organization, to help it maintain and create an operating fund. (1/26/04, pp. 29-30)

A greater role for the Legislature in the affairs of the EDC was also envisioned:

MS. PETRASEK: One of the things that was mentioned earlier was also to have the minority and the majority all have seats on the Board as well as the Chair of the Economic Development Committee is appropriate so that this body also has some connection to the organization and can oversee the work that it's doing especially with respect to the disposition of any county owned assets. (1/26/04, pp. 18-19)

Finding 21. Entities within the vertical are performing duplicative work.

The County now finds itself with two local development corporations. The Administration's report recommended that the "consolidation of the EDC and the LDC should be actively pursued."⁶⁰ Raffaella Petrasek was asked her view of this:

LEGISLATOR ALTMANN: And finally, do you agree with Mr. Gianelli's conclusion that it would be a wise idea to merge the EDC and the LDC?

MS. PETRASEK: I do agree that that should be considered. One of the things that I have tried to do with the Economic Development Corporation was to sort of introduce the organization to the public, introduce the organization to economic professionals out there doing business on Long Island both at the State level, on the public and private level. The anecdotal information on the LDC was that it was dormant, I think there wasn't a reliable representation from the County in the past with respect to economic development and I would be concerned about them feeling that the LDC by virtue of its name and past reputation might cloud what I've tried to set aside and set apart the Economic Development Corporation.

But I don't believe there is a need for two separate local development corporations. I think you can create a composite local development corporation that encompasses all of the goals and objectives of both the LDC and the EDC.

One of the things that I have already tried to look into was JDA Financing, the job development authority, and whether EDC by virtue of its articles of incorporation and by-laws, whether the organization is an appropriate conduit for JDA funding. So I had already tried to figure out ways that we could sort of bring some of the goals and missions of the LDC into the EDC and I think that that's something that we should definitely pursue and consider. (1/26/04, pp. 63-65)

MS. PETRASEK: Well, one of the things again, and not to be sort of repeating anecdotal information, but what I've learned was sort of, the reputation of the LDC was one that only had to follow it into dormancy but there were some concerns about whether you would have a consistent partner on the economic development front in Nassau County. So that may have been what led to the creation of a separate organization that was separate and distinct, it had its own name, and could create its own reputation by virtue of the acts of the Executive Director and the staff of that organization so that could have been part of the thought process. But again, in terms of the function of the organization, we can consider how to bring the two back together and just demonstrate and be very vigilant about always being there to represent Nassau County on the economic development front. (1/26/04, pp. 148-149)

Recommendation: Consolidation/Elimination of entities which are duplicative. Examine the bylaws, mission and purpose for each EDV entity in question (i.e. EDC, IDA, LDC, SET, NCPUA, etc.) with the aim of proposing a consolidation of the entities, or eliminating entities that serve a duplicative purpose.

⁶⁰ Gianelli, op cit, p. 46

There are many ways for a municipality to organize the delivery of its economic development programs. The results from a survey of local economic development entities conducted by the Office of Legislative Budget Review are discussed below.

An analysis of Economic Development entities located on Long Island found that currently there are 26 entities engaged in economic development at the regional, county and town levels. The mission of these agencies can be divided in two categories, those which service businesses in the hope of attracting and retaining jobs and those which aim to redevelop areas in terms of housing and pollution. These entities are primarily organized in three different formats: as local government agencies/departments, state authorized agencies, or locally authorized not-for-profit corporations.

Our survey found that the entities analyzed operated more separately than those currently contained within Nassau's Economic Development Vertical.

In Suffolk County, the Economic Development Department is separate from both the Community Development Agency and the Industrial Development Agency. The Community Development Agency is considered part of the County Executive's Office. It administers the distribution of federal HUD money. The Industrial Development Agency (IDA) operates independent of Suffolk County Government. The Industrial Development Agency does not combine any of its staff members or purchasing requests with those of Suffolk County Government. Moreover, all of its board members are appointed by the Suffolk County Legislature. Suffolk County does not have any not-for-profit development corporations. The new Suffolk County Executive has announced that he is creating an Economic Development Advisory Council to advise the County. The council will be comprised of roughly nine prominent business executives in commercial real estate, technology, and industry.⁶¹

The Town of Brookhaven similarly separates its housing departments from those which cater to businesses. It similarly placed one of the departments directly in the County Executive's office. The Town of Brookhaven has a Department of Housing, Community Development and Intergovernmental Affairs that administers the distribution of Federal HUD money. That department is separate from the Town's Division of Economic Development that is considered part of the Office of the Supervisor.

As was found on Long Island, a greater degree of separation exists between the New York City economic development entities. In fact, the administration of New York City's CDBG funds is not even done by a department contained in their economic development and rebuilding vertical. New York City's Office of Management and Budget is responsible for the draw-down of the City's CDBG funds.

In the City's Economic Development and Rebuilding vertical, there are five tax-payer funded departments and one self-funding, not-for-profit corporation. The not-for-profit corporation is the Economic Development Corporation. It has its own board and reports directly to the City Deputy Mayor for Economic Development and Rebuilding. The reason for its inclusion in the City's vertical is the fact that formal contracts have been signed between itself and the City such

⁶¹ Herzlich, Jamie, "New Head of Economic Development", Newsday, March 6, 2004.

that it serves as an agent of the City. Its board members are appointed by the Mayor and are a mixture of both private and public individuals.

Similar to the other economic development entities surveyed on Long Island, New York City's economic development entities do not share personnel and make their own individual procurement requests.

New York City has an additional 22 independent economic development and rebuilding entities. These entities are termed liaisons on their organization chart. These entities are comprised of independent authorities, boards, commissions and corporations. These entities do not have a direct reporting relationship with New York City's government.

Current Status of the EDC

In a memo dated September 10, 2004, OHIA Director Rosemary Olsen provided Deputy County Executive Patrick Duggan with an update on the status of the EDC. The offices' of those two individuals and the Office of Compliance, had determined that the EDC would "substantially reduce" its operations, and "function as a board without employees." The EDC's two sub-recipient grants had been terminated, and the \$1 million balance in HOME and \$250,000 in CDBG funding reverted to OHIA. "EDC currently retains CDBG funds required for the payment of anticipated expenses." The EDC's projects would continue under OHIA administration. In the future the EDC would only be utilized to pursue projects that cannot be undertaken by OHIA.

Non-County Agencies: Conclusion

Recommendations for the various findings relating to the non-County agencies are as follows:

- 1. The County should establish formal contractual relationships with all of the independent corporate entities.***
- 2. The creation of procurement rules and guidelines has already been suggested in the Administration's report, but the Legislature could add a requirement that all procurement rules and guidelines for each entity be submitted to the Legislature.***
- 3. Require that all contracts awarded by the entities in excess of \$25,000 be reported to the Legislature and the County Comptroller.***
- 4. Require that all RFPs issued by the entities be filed with the Clerk of the Legislature and placed on the county's website, within three days of the issuance of the RFP.***

Other Issues

Mention must be made of several serious issues that have emerged which, though tangential to the focus of the hearings, are nevertheless significant.

Sexual Harassment Policy

It was clear from the questions asked by various legislators that the County’s sexual harassment policy, as described by the key Administration officials in charge of its development and implementation, might have some flaws, particularly in the case of a criminal allegation. The handling of one very serious “hypothetical” case, discussed at some length during the hearing, and considered by the Administration an example of the policy working successfully, produced an outcome ambiguous at best as to whether justice had been served. According to John Donnelly, Director of Human Resources at that time, “the policy was put together in conjunction with the County Attorney’s Office, the Director of EEO and my office, along with Labor Relations.” (2/2/04, p.291) The legislators’ concerns focused on i) the confidentiality of the complainant; ii) who, in the chain of command actually hears and acts upon the complaint; and iii) in cases of possible criminality, who bears the responsibility in or for, reporting the incident to a legal authority.

Legislator Altmann expressed her misgivings about the policy to Mr. Donnelly:

“You are not set up for a criminal investigation. In the end of the day you don’t know whether the allegation I made to you is true or not because you’re not a forensic expert or anything like that. I think the policy is weak in the sense that it doesn’t provide for you or somebody like you to then carry that a step further and make a report to the police department and at least advise the police department of something like that. It seems to me that there’s a gaping hole there in terms of the County’s liability, both moral and legal authority, to go ahead and do that. It seems to me that we have an ethical obligation at that point to let the police department know that there’s an allegation of criminal activity. It seems like it just drops there and that worries me. I just want to say that for the record. Maybe this is something that needs to be corrected for the future.” (2/2/04, pp. 315-316)

Although Mr. Donnelly testified it was not within EEO policy to report possible criminal activity, he stated that there were other avenues to explore when dealing with possible criminal cases. “Again, I just want to state that people usually do not avail themselves of the EEO policy to address criminal issues. They would, obviously, not be utilizing this policy to address criminal issues. They would have other avenues open to them in the case you’re using.” (2/2/04, p. 254).

Minority Leader Schmitt continued this line of questioning in the following exchange with Chief Deputy County Executive Anthony Cancellieri:

LEGISLATOR SCHMITT: So, just to wrap out, I just want to be clear. If an employee of this County came to you as the Chief Deputy County Executive with a complaint about criminal activity that reached a felony level you would refer it to the Commissioner of Investigations and not the police department or the D.A.?

MR. CANCELLIERI: Unless the crime was taking place right in front of me I would refer to the Commissioner of Investigations. Absolutely. If it was happening in front of me, I would call the police. (Rules Committee Hearing, 2/2/04, p. 392)

MR. CANCELLIERI: I'm just telling you there's a structure in place. Please feel comfortable with it.

LEGISLATOR SCHMITT: But I'm not comfortable with it. (2/2/04, p.395)

After several hours of discussion between and among the legislators and the Administration, the hearings were adjourned and the legislators' concerns regarding the County's EEO/Harassment Policy were left unresolved.

Related to this issue, a 23 year old female, employed by Nassau County in the position of an administrative assistant to former Deputy County Executive Peter Sylver, filed a Federal civil lawsuit on March 9, 2004 seeking monetary damages, punitive damages and declaratory relief against the County of Nassau, its County Executive, Thomas Suozzi, Deputy County Executive for Economic Development, Peter Sylver, the Nassau County Legislature and its Minority Leader, Peter Schmitt and the Director of Human Resources, John Donnelly. The allegations against Peter Sylver charge sexual assault, sexual misconduct, sexual harassment, physical assault and other misconduct. The allegations against the legislative defendants charge violation of a written confidentiality agreement between the County and employee by publicly disseminating details of the employee's claims of sexual assault by the Deputy County Executive, Peter Sylver, and violating the employee's constitutionally guaranteed rights to privacy by disclosing such details to the media.

The plaintiff claims:

Shortly after her commencement at that position, Sylver began making repeated and inappropriate physical and sexual advances toward the employee. These overtures were uninvited and unwanted. Sylver's sexual misconduct persisted on a regular basis between August and November 2003. In September 2003, Peter Sylver coerced the plaintiff to perform sexual acts in Peter Sylver's office and in automobiles while the plaintiff was accompanying Peter Sylver on County business. As a result of the plaintiff's complaints to other employees of the County, the plaintiff was directed to John Donnelly, the County's Director of Human Resources.

Donnelly counseled and encouraged the plaintiff to execute an "Agreement and General Release" prepared by the County whereby the County would agree not to divulge the details of the plaintiff's allegations to any third party. On November 18, 2003, the plaintiff executed the Confidentiality Agreement under duress and without benefit of counsel. Under the terms of the Confidentiality Agreement, the County reemployed the plaintiff as an administrative assistant in another County department at a modestly increased annual salary. The plaintiff relied upon the promised confidential nature of the Confidentiality Agreement. The Agreement releases the County, agencies and employees from "any and all claims arising out of her employment and waives any and all claims against the County arising out of her employment, except a proceeding to enforce the terms of this agreement."

Sometime in January 2004, Peter Schmitt learned of both the Confidentiality Agreement and acts of sexual misconduct and assault alleged to have been committed by Sylver, and requested that John Donnelly instruct the plaintiff to provide a full statement and complete details of the events to Peter Schmitt and to members of Schmitt's legislative staff. The plaintiff did so with John Donnelly's continuing assurances that all disclosures would be kept confidential as provided for in the Confidentiality Agreement. At a public legislative hearing on January 26, 2004, to which Peter Schmitt had invited members of the media, Schmitt called the plaintiff as a witness to testify in public about the sexual harassment and sexual assaults suffered by the plaintiff. Outside the legislative session, Schmitt provided all the confidential details to the news media, including *Newsday* and *The New York Times*.

According to the lawsuit, the Confidentiality Agreement was authorized and approved by the Nassau County Legislature and the County Executive. The conduct of the defendants amounted to deliberate indifference to the plaintiff's constitutional rights of privacy. Furthermore, the County's hiring and failing to perform due diligence in Peter Sylver's background amounted to deliberate indifference, since Peter Sylver had been convicted of a felony, which rendered him unfit and unqualified to hold a high appointed office in County government. The lawsuit maintains that all such information relating to Peter Sylver's prior acts were readily ascertainable from public sources and public records by utilizing due diligence prior to his appointment as Deputy County Executive. The suit also maintains that the County Executive did not conduct a background check on Peter Sylver and that the County Executive, the County, John Donnelly, Peter Sylver, Peter Schmitt and the Nassau County Legislature conspired with each other to deprive the plaintiff of her constitutional rights.

The lawsuit states that the plaintiff also intends to file along with the federal action, a Notice of Claim against all the defendants under the New York General Municipal Law, Section 50-e and Notice of Charge with the Equal Employment Opportunity Commission. Additionally, the plaintiff intends to pursue all her rights under Title VII of the Civil Rights Act 1964.

The United States District Court for the Eastern District of New York (Judge Feuerstein) granted in part defendants' motions to dismiss the complaint. Certain causes of action were dismissed - those based on section 1983 of the United States Code. County Executive Suozzi was the only defendant who was entirely dismissed from the case as a result of the Court decision. The following counts in the Amended Complaint remain: the First Cause of Action seeking declaratory relief from Legislator Schmitt and the County regarding the breach and repudiation of the General Release and its confidentiality provisions; the Second Cause of Action against Sylver for violation of 42 USC §1983 and common law claims; the Fourth Cause of Action against the County, Mr. Sylver and Mr. Donnelly for violation of NY Executive Law §296; the Fifth Cause of Action pertaining to a Title VII violation against the County; the Sixth Cause of Action regarding claims of assault, battery, sodomy and attempted rape against Mr. Sylver; the Seventh Cause of Action against Mr. Sylver and the County for intentional infliction of emotional distress because of Mr. Sylver's actions; the Ninth Cause of Action against Legislator Schmitt, the Legislature and the County for violation of NY Civil Rights Laws 50-b and 50-c;

and the Tenth Cause of Action against Legislator Schmitt, the Legislature and the County for intentional or negligent infliction of emotional distress because of Legislator Schmitt's actions.

Subsequently, the County Attorney has recommended to the Legislature that this case be settled for payment of \$375,000 to plaintiff and \$100,000 in attorney's fees to her counsel. On January 12, 2005 this item was approved by the Finance Committee by a vote of five Democrats in favor and four Republicans against, and the Rules Committee by a vote of five Democrats in favor and three Republicans against. The item is scheduled to come before the full Legislature on January 24th.

The Role of the County Attorney in Legislative Hearings

Pursuant to the County Charter, Article XI, Section 1102, page 67, "The County Attorney's Office shall represent the County and all departments, officers, institutions and agencies thereof, in all litigation ... and act as legal adviser of the County and all departments, institutions, officers, agencies, or offices thereof."

Questions were raised about the appropriateness of the County Attorney's Office to act as legal adviser to the independent corporations and all the previously mentioned County entities, which includes the Legislature, during legislative proceedings. The hearings highlighted how difficult this is especially when the interests of the County, its employees and those of independent corporations are not aligned.

From the start of the hearings the County Attorney's office acted on behalf of the County's interest when it sought to limit Legislative questions which would relate to matters that were the subject of the Williams/Pellegrini lawsuit. Legislator Ciotti asked Ms. Botwin, "Why would the County Attorney's Office state that we should not call these two people as witnesses?" (1/23/04, p. 8) Ms. Botwin replied:

It has been our position that it is not prudent for this Legislature to start questioning either the county witnesses as to the litigation or the plaintiffs as to the litigation. The matter is before the federal court, it will get litigated out that, and that is the form in which the issues are going to get explored fully.

We've given that advice as to both our own witnesses and as to the plaintiffs. This Legislature has the authority to determine the scope of the questions it wishes to ask. We reached, I believe, an accommodation where certain questions and issues were explored last time through the county witnesses, and certain questions were not answered and the Legislature was willing to abide by that. I assume that a similar accommodation will be reached. (1/23/04, p. 8-9)

The following exchange ensued:

LEGISLATOR CIOTTI: Can you cite the law that precludes us, as a legislative body, from questioning any witness?

MS. BOTWIN: Legislator Ciotti, like I just said, our advice previously had been as to the prudence of the conduct of the defense of the County's position in the Williams' litigation. But for enforcing the subpoena we will go immediately to

court and seek an order to enforce the subpoena. That is our role as County Attorney's Office and we are happy to take that direction.

LEGISLATOR CIOTTI: I'm asking you just a practical and legal question now, nothing more, nothing less. Could you site the law that precludes us, as a body, from asking any specific question regarding civil litigation?

MS. BOTWIN: The law depends on the specific question that you might choose to ask, and the witnesses' knowledge and the other matters that might be involved in answering that question. I really can't answer that in a general basis. What I am responding to is on the basis of prudence, not on the basis of –

LEGISLATOR CIOTTI: Aside from the Fifth Amendment that gives a privilege to somebody not to incriminate themselves, what other privileges are there for you to preclude someone from answering our questions?

MS. BOTWIN: There are a number of privileges that attach generally and –

LEGISLATOR CIOTTI: Tell me what they are.

MS. BOTWIN: Mr. Ciotti, I believe –

LEGISLATOR CIOTTI: I sat here the other day and I watched you advise people, I felt, inappropriately and incorrectly directing them not to answer us. Now I'm asking you, specifically, what law are you relying upon to advise these individuals who are not being criminally investigated, nor have they been criminally charged, what law, what CPLR, what rules are you relying on to advise them to preclude and fought this investigation. That's my question.

MS. BOTWIN: The legal answer depends on the specific question that has been asked. As to any specific question, if there is a problem we could go into court and seek to quash the subpoena and seek an order protecting the witness from answering a particular question.

What I have explained, and I'll just repeat it, is that my advice, our advice and the position we took last time was a matter of prudence and defending the County's interest in a litigation in which damages amounting to more than \$70 million have been sought. We thought it was best not to explore certain areas, and we gave that advice and asked the witnesses not to answer, and we asked the Legislature not to propose those questions.

LEGISLATOR CIOTTI: So, therefore, you have no legal precedence other than you believe they should not answer the question. Is that correct?

MS. BOTWIN: The answer is it depends on which particular question has been asked. Any question, there maybe legal grounds in which not to provide an answer, but our overall advice here was a question of defending the County's interest in litigation.

LEGISLATOR CIOTTI: And shutting down and thwarting our responses to questions that would profit the witnesses.

MS. BOTWIN: Absolutely not. It was to protect the County's interest in the litigation and allow the matter to be fully explored in the litigation context. (1/23/04, pp. 9-12)

The County Attorney's office also provided counsel to the employees of the County, "in their official capacity". (2/6/04, p. 179) Attorneys from the department met with employees prior to their testifying before the Legislature. The attorneys could only represent employees if they agreed to follow County procedures and answer the questions asked by the legislators during the hearings. Ms. Botwin stated:

If one of the County employees decided they didn't want to answer the Legislature's questions, we could not represent them. We could not advise them on not answering. (2/6/04, p. 181)

With some County employees they went further, recommending that they seek private counsel since the County Attorney's office would not be able to represent them. Ms. Botwin testified,

We advised three employees that they should consider whether to engage private counsel to advise them on their own personal situation because of an official referral from the Office of the Comptroller to the District Attorney's office. (2/6/04, pp. 183-184)

The County Attorney's Office also sought to represent an employee of the Economic Development Corporation (EDC), then Executive Director Raffaella Petrasek. The EDC is an independent corporation with no formalized relationship to the County, as was pointed out by Legislator Ciotti: "I have a question as to why counsel for the County would be representing an independent corporation that for three days I've heard has nothing to do with Nassau County." (1/23/04, p. 289)

Ms. Botwin explained:

The EDC is permitted to request the County Attorney to work for them as counsel and in fact that is one of the recommendations of both Deputy County Executive Arthur Gianelli is that we enter into formal relationships where the County Attorney would provide legal services to the not-for-profit corporations and local development agencies that are working to advance the County's interests. (1/23/04, pp. 291-292)

Then Minority Leader Schmitt noted, "That wasn't authorized by the Legislature." (1/23/04, p. 292) The issue was settled by Legislator Jacobs when she told Ms. Botwin, "we would really appreciate it if in this particular case you would allow Ms. Petrasek to be up here on her own." (1/23/04, p. 294)

Thus, the hearings highlighted the fact that the County Attorney's Office represents the County's interests and, in their official capacities, the employees of the County, so long as the employees chose to follow the County's interest and operate according to County procedures. Whether this is in keeping with their Charter mandate to represent all County Officers in all litigation and if it is possible to protect the County's interest while also representing all County Officers in all litigation are questions that should be probed. Additionally, thought should be given to whether representing and advising employees of an independent corporation is permissible in a

department charged with representing and advising the County and all departments, officers, institutions and agencies thereof.

The hearing also brought to light separation of power issues. During the hearings the County Attorney's office met with all County employees before they testified. The appropriateness of this is not clear. The County Attorney's Office was not asked by anyone on the Rules Committee or in the Executive branch to conduct these interviews. When asked by Minority Leader Schmitt, "Did you or your staff reach out to any of the individuals who appeared or were scheduled to appear at the Legislature for these hearings?" (2/6/04, p. 155) Ms Botwin replied:

Yes. We have talked about the testimony with every County employee before they testified. (2/6/04, p. 155)

Minority Leader Schmitt then asked, "At whose direction?" (2/6/04, p. 155) and Ms. Botwin answered:

Basically at our own initiative. It was obviously the right thing to do. (2/6/04, p. 155)

Ms. Botwin elaborated on this point:

We are the County Attorney's office. They are County employees. They've been asked by the Legislature to come in and testify under oath on matters of importance to the County. It is our job to make sure that they understand the meaning of testifying under oath, what a legislative hearing is going to be like, that they may become nervous under questioning, that they may get questions that are friendly, but they may get questions that are a little more hostile, they should be careful in answering under oath, that they are always telling the truth, that they are required to answer questions truthfully. We help them review the reports to make sure that they remember the various facts and make sure that they know the answers to possible questions that they think about them in advance and that they don't just come up and make these hearings a little less useful by saying I don't know, I don't know, I'd have to go look it up.

In particular, in dealing with the witnesses who were perhaps going to be asked questions that would arise out of the Williams/Pellegrini lawsuit, we discussed with them the Legislature's decision to limit questioning to the issues of whether federal funds were misused in paying salaries, and whether Civil Service laws had been violated. We specifically instructed them that that was what the Legislature had decided to limit questions to so that if they were asked questions in other areas they should wait before answering and see whether the Legislature still wanted to adhere to that restriction. It was our opinion, as County Attorney's office and counsel for the County in that lawsuit, that it would be detrimental to the County's interests to explore other areas. And we were happy that the Legislature had agreed with that, and wanted to make sure the witnesses understood that too. (2/6/04, pp. 155-157)

Minority Leader Schmitt later asked,

And you felt no – in your mind you felt it was the right thing to do to take the witness list put forth by this Committee to reach out to those people and to sit them down and discuss with them all of the things in the manner and fashion in which you just described, and you felt no need to advise either the Majority leader or the Minority leader or any other member of this Legislature, as far as I know, that you were doing this.

Did you advise any member, elected member, of this Legislature that you were taking it upon yourself to interview our witnesses before we got to talk to them? Yes or no. (2/6/04, p. 163)

Ms. Botwin further explained:

It was the work of the County Attorney's office. Wait, I'm going to answer. I think I know where you're going.

It was obviously the right thing to do. It was so obviously the right thing to do that I'm sure we didn't discuss it with anyone except just to start doing it. Because you started off with the witnesses on the Civil Service issues where that was the Williams/Pellegrini lawsuit, obviously, those were issues we had to raise with people.

But even going back before that, we were working, starting in November, with the people in the Economic Development Vertical making sure all the information came out, making sure all the investigators had the information that they were looking for. Doing this was just a continuation of the role that we had been assuming from day one." (2/6/04, pp. 165-166)

Recommendation: When a potential conflict of interest is present between the interests of the Executive and Legislative branches, outside counsel should be utilized.

The Role of the County Attorney in the Issuance of Subpoenas

Should the County Attorney's Office be in charge of both administering and enforcing legislative subpoenas? During the Rules Committee hearings, the County Attorney's office was asked by the Legislature to administer and enforce Legislative subpoenas. Presiding Officer Jacobs said that she had witnesses subpoenaed and re-subpoenaed. (1/23/04, pp. 5-6) When the witnesses did not show, upon the recommendation of their personal attorney, Presiding Officer Jacobs, "directed the County Attorney's Office to file an Order to Show Cause to pursue compliance with the subpoenas previously issued to Tom Williams and Robin Pellegrini." (1/23/04, p. 6)

This may not have been the best course of action to take since the County Attorney's office was simultaneously subpoenaing witnesses to come and testify while advising them not to answer particular questions. Legislator Ciotti stated,

Thank you. First of all, thank you for directing the County Attorney to do that. I now have a concern. You have a County Attorney who is telling you that you should not, if I heard you correctly, that you should not call them as witnesses,

and we are now directing them to comply with our subpoena. Doesn't that sort of conflict with what they're telling you?" (1/23/04, p. 7)

Legislator Toback followed up this line of questioning when he asked Ms. Botwin,

Are you confident that there are no conflict issues that would conflict your office out of doing this based upon the fact that you have directed several witnesses so far to not answer certain questions, and you've counseled us, to some extent, that even the plaintiffs in this lawsuit shouldn't be asked certain questions." (1/23/04, p. 12)

Ms. Botwin later explained:

But there is a real difference between enforcing a subpoena and a command to appear in deciding whether to answer any particular question. A subpoena can be enforced. The witness can be brought to appear. And then, as the questions are posed, the issue becomes whether any particular question is properly posed in an – whether the witness can be ordered to respond to a particular question. (1/23/04, p. 13)

Serving and enforcing legislative subpoenas proved to be such a difficult task for the County Attorney's office that Minority Leader Schmitt made a motion to have the Legislature's Majority Counsel enforce Legislative subpoenas. He stated:

I have no confidence in the County Attorney's Office who represents the County Executive and all of the other people who have been up here to enforce the legislative authority. And that the legislative integrity should be enforced by the Legislature and, therefore, your counsel, as majority counsel, should go into court. (1/23/04, pp. 28-29)

Minority Leader Schmitt's motion failed because the legislators did not feel that they had the right to modify the County Charter. Legislator Altmann said, "I just want to say, for the record, that I think that it would be a mistake for the Rules Committee, who represent the people here are supposed to get the rules, to circumvent the process through a motion at this point." (1/23/04, p. 29)

Legislator Denenberg concurred when he stated:

I don't think the Rules Committee, by motion, can circumvent the Charter. The charter says that our powers are enforced through the County Attorney's Office, whereas I understand and, in large part agree with the idea that our counsel could enforce our powers. (1/23/04, p. 30)

Lastly, even when the Legislative witnesses did appear before the Legislature, getting them to answer questions turned out to be a difficult task. Several witnesses refused to answer questions on the advice of counsel due to potential civil litigation. Some refused to answer the questions in spite of their desire to set the record straight.

When Minority Leader Schmitt asked Mr. Cancellieri, "Did you ever speak with any of the Civil Services Commissioners about terminating or replacing Mr. Williams?" (1/21/04, p. 303) Mr. Cancellieri responded:

I believe on the advice of counsel [County Attorney Lorna Goodman], that would be imprudent to answer given the fact that the County is currently in a lawsuit with Mr. Williams, and the matter is currently before court. And I think that goes to the heart of the issue. (1/21/04, p. 303)

Mr. Cancellieri went on to say that:

I would love to testify, if I could. I'm biting my tongue right here, but I can't. (1/21/04, pp. 303-304)

Mr. David Gugerty, Commissioner of Civil Service, also refused to answer questions on the advice of counsel due to potential civil litigation. When Minority Leader Schmitt asked him, "Who decided that Mr. Williams would be terminated for this?" (1/21/04, p. 452) Mr. Gugerty replied:

I'm going to have to assert our privilege not to answer any questions about his termination, but I concur with Mr. Cancellieri. Believe me, I would love to go on at length for the legitimate reasons. (1/21/04, p. 452)

One subpoenaed witness did not refuse to answer on the advice of counsel, he just had the County Attorney's office stipulate that he would prefer not to testify. Ms. Botwin stated,

Mr. [William] Long has just informed me that he would prefer not to have to testify before this legislative committee, although he came pursuant to the subpoena and he has been here all day long. I would just offer, on behalf of the Administration that we are perfectly willing to stipulate that Mr. Long was doing the same work when he was in a title at OHIA as he was doing in Planning. And in fact we are willing to stipulate that as to Mr. Balter and Mr. Brickman, as well. (1/21/04, p. 464)

In light of the difficulties encountered in serving and enforcing subpoenas and in eliciting answers from subpoenaed witnesses Legislator Ciotti stated:

Based on what I've heard today, and based on what I witnessed in the last few days at this hearing, I would believe that our counsel, both the Majority and Minority counsel, should file the Order to Show Cause. Why should we have to let them figure out if there's a conflict of interest when I, myself, have probably had 20 questions shut down based on no legal right, no asserted privilege under the Constitution of the United States, and nothing other than their concept of what prudence is in a potential piece of litigation.

We called for a hearing. The basis for a hearing is to lay a foundation. The Presiding Officer said we are going to try to keep this bipartisan, and I think to a large extent that has happened. But that means we need a fact-finding process. You cannot have a fact-finding process when an individual sits here with an attorney, who is not being criminally accused, not being criminally investigated and is advised not to do it. Why have a hearing when 50 to 70 percent of the questions are shut down based on what they say is prudence in potential civil litigation? (1/23/04, p. 16)

Recommendation: A maintenance contract should be entered into between the Legislature and a process service company/law firm to serve and enforce the subpoenas. Moreover, legislation

should be considered to penalize those who ignore legislative subpoenas, and who refuse to testify in the absence of any legal right not to (i.e. 5th amendment).

Quid Pro Quo

Testimony was heard on the allegation made by Robin Pellegrini that the Sheldrake Organization, a real estate development firm, would receive an OHIA contract if Peter Sylver's brother was given a job. Chris Daly is the principal owner of Sheldrake.

LEGISLATOR SCHMITT: Okay. At any of those meetings did Peter Sylver ever offer to give Sheldrake work in exchange for training his brother in the field of construction?

MR. DALY: No.

LEGISLATOR SCHMITT: The offer was never made?

MR. DALY: No. I'm sorry. Yes, it was never made by Mr. Sylver.

LEGISLATOR SCHMITT: By anybody else?

MR. DALY: Yes.

LEGISLATOR SCHMITT: Who?

MR. DALY: Ms. Pellegrini.

LEGISLATOR SCHMITT: So, Ms. Pellegrini told you that you would get work for Sheldrake if you hired Mr. Sylver's brother?

MR. DALY: That's not how it happened.

LEGISLATOR SCHMITT: Would you tell us how it happened?

MR. DALY: She, best of my recollection, around the time of the first meeting, she called me on my mobile telephone and said that Peter Sylver's brother is involved in construction, and it might help me if I would hire his brother.

LEGISLATOR SCHMITT: What did you do after that was said to you?

MR. DALY: To the best of my recollection I said, Robin, we shouldn't be talking about this, and I hung up the phone and it was never brought up to me again. (2/6/04, pp. 43-44)

Ms. Pellegrini recalled the events as follows:

I called Chris Daly from Sheldrake, said that Peter wanted to meet with him. That was a Thursday evening. Chris was very anxious to meet. He came over to my office at 5 p.m. I escorted Chris into the office, and presently was myself, Rob, Peter and we sat down. Rob Benrubi, myself, Peter.

Peter asked about his projects and about the HOME funding he had received through OHIA, and Chris explained everything. After that, Peter said my brother is very interested in learning the ropes in land development, right now he is in the construction field. Maybe you could do something for my brother, and we could

work something out for your next project. I literally wanted to crawl under the table.

Chris was very uncomfortable. He said, immediately, have you had this room checked for bugs? You know we shouldn't be talking like this. Peter said to Robert, that's a good idea, maybe you should get Tony Cancellieri here to check it out.

The conversation was obviously over. Chris left. That was it. Chris was uncomfortable. We knew that it was all – he saw that I was uncomfortable. It was gone. I knew that this meant trouble, and I knew I had to tell the County Executive immediately. I told Robert Benrubi what Peter did was wrong, and I told him that I was going to make sure that the County Executive knew.

The next day I went to see Bruce Nyman [Director of Communications]. Bruce I knew for years as the City Manager in Long Beach, and I felt safe. I walked into his office unannounced and he had an office full of people, but I saw it wasn't official ...

He cleared out the office. Come in, close the door. I explained everything to Bruce. Bruce was appalled. He took down Chris Daly's telephone number from me. He told me that he was going to take this immediately to the County Executive. I was more concerned about his back firing. I was more concerned that we should have someone in our office, brand new, that could talk like this – he had only been there a week and a half and already he was doing something like this. I was very upset.

The next day, Saturday, I came into the office as usual at nine o'clock. And as most of you know, I work there on Saturdays and most of you would come into see me on Saturdays to pick up census track maps and call me. I was there, as usual.

At approximately 11 o'clock, Peter Sylver arrived with his entire family. They came in with boxes of Peter's things to decorate the office. Peter asked me what I was doing there, and I told him I normally work on Saturdays, I'm here. With that, he introduced me to his brother Hakeem (phonetic). This is Hakeem, this is my brother who is the contractor. Hakeem, have a seat in Robin's office, he said. I'll be in in a couple of minutes, Peter said. Get acquainted.

Hakeem sat down. He was in there for about 15 minutes. Hakeem gave me his cell phone number, his home number. Hakeem explained to me that Peter had explained to him about the meeting with Chris Daly and that he was very anxious to get started. I was very uncomfortable, and then Peter came in and closed the door.

He asked me to get Chris Daly on the phone to arrange a meeting with his brother and possibly meet today. I made the call and when Chris answered I said hi Chris, its Robin. I'm in my office. I have Peter's brother Hakeem here, and he would like to meet with you. With that, Chris said abruptly, I'm in the City with my family. Don't ever call me again regarding this matter, and hung up. That

was it. He was disturbed, and he knew what the story was because of the meeting prior. He did not want to discuss anything.

I was upset. I was a little concerned. I had my immediate superior, my new boss, sitting in front of me, I had Peter's brother sitting in front of me, and I now had to explain this to them.

I told Peter and Hakeem that Chris was busy and that if Peter wanted to reach out to Chris he would have to do it himself. I gave him Chris' number and I said I can't do this. I told many of my close friends, but my closest friend, Gloria Lind, who is the audience here; I was so upset that night I really didn't know what to do. I knew that this was wrong. (2/9/04, pp. 15-19)

Mr. Sylver's brother was not hired by Daly:

LEGISLATOR ALTMANN: Peter Sylver's brother never got a job with Sheldrake or any other LLC owned by Sheldrake.

MR. DALY: Yes. (2/6/04 p 57)

Alex Sepulveda, hired as a program coordinator for OHIA, testified that he went to law school with Peter Sylver (2/6/04, p.135), and Bruce Morgan, hired as a housing specialist said that he and Mr. Sylver, "went to undergrad school together." (2/2/04, p. 227) Another County position was found for Mr. Sylver's cousin, who first worked for SET and eventually moved to the Purchasing Department. Testimony was elicited on the subject of nepotism:

LEGISLATOR SCHMITT: Do you know what, if any other relatives of Peter Sylver, Nassau County or related entities employed or employ?

MR. GIOINO: His brother may work for the Board of Elections and his ex-wife, I believe, works for OTB. That's my only knowledge. That's the only knowledge that I can recall. (2/23/04, p. 188)

Garden City Hotel

One use of the OHIA credit card that has drawn a lot of attention was for a room at the Garden City Hotel. This first became an issue during the hearing on February 17, 2004 when it was introduced by Minority Leader Schmitt as follows:

I have an original credit card receipt that was sent to me anonymously from the Garden Hotel with the Peter Sylver credit card receipt on it, and it is a receipt for a room on October 23, 2003 – arrive October 23; depart October 24, \$195.56. According to the jacket it is room number 910. I have sent people over to the Garden City Hotel and room number 910 is not a meeting room, it is a motel room.

Liz Botwin [of the County Attorney's office] testified under oath that we had received everything concerning the credit card, and this does not show up on the credit card receipts or the credit cards expenditures that have been forwarded to this Committee by the Administration. So we are calling for the production of the – well, we have the credit card statements, it's not there. (2/17/04, p. 148)

A charge in the amount of \$195.56 did not show up on the credit card statements because it was for the one night cost of the room only and not the entire bill. An additional \$43.72 was spent on two breakfasts, signed for with a signature that appears to be Mr. Sylver's, bringing the total cost to \$239.28. The statement for November 11, 2004 did include a charge of \$239.80 for the Garden City Hotel. However, the following statement, dated December 3, included a credit from the Garden City Hotel for \$239.28, thereby reversing the entire charge. The room in question, in the words of Minority Leader Schmitt, "is a penthouse suite that cost normal people \$1,800 a night, and this was rented by Peter Sylver or by his credit card for \$195." (2/23/04, p. 5)

As reported in *Newsday* on February 19, 2004, the Garden City Hotel issued the following statement:

On Oct. 23, 2003, Peter Sylver requested a room to conduct interviews for Nassau County. He presented a Visa credit card with his name on it and Nassau County OHIA. That credit card was billed \$239.28 on Oct 24, 2003. On Nov. 21, 2003, after receiving a telephone call from Mr. Sylver's office where they stated they did not use the room and [asked] why was his credit card charged, based upon that statement from the deputy county executive's office, the Garden City Hotel issued a credit of \$239.28 to that credit card.⁶²

The article pointed out that the hotel's spokesperson, "would not say whether the room was used."

It was not exactly Mr. Sylver's office that called to have the charge removed, but rather a representative of the Crowe Deegan law firm, Jon Kaiman⁶³, who had been told by Mr. Sylver that the room was not used. Mr. Deegan explained that, "Sylver asked his firm, which was working for the housing office at the time, to lend some technical assistance in analyzing the credit card charges, to determine whether the expenses should be paid by federal funds, industrial development agency money or other county dollars."

The February 19th *Newsday* article included the Administration's response to the hotel story:

A spokeswoman for Suozzi said in a statement that the first the administration heard about the hotel room being used was when Schmitt announced it at the hearing. The administration had disclosed the original charge and subsequent credit and "that's the extent of our current knowledge."

The receipt for the room was not signed, but referred to a signature on file. The receipt for the breakfast had Peter Sylver's name on it.

Department of Investigations

The independence of the Office of the Commissioner of Investigations was called into question as a result of its handling of the EDV disclosures. Directed by the Administration to look into the allegations made by the Executive Director of Civil Service (discussed below), the

⁶² Hadrick, Celeste, "Sylver Hotel Bill Now at Issue", *Newsday*, February 19, 2004.

⁶³ Robert Kessler, "Hotel worker says Sylver used suite," *Newsday*, March 10, 2004.

Commissioner looked into only those allegations and did not broaden the scope of her investigation as problems in the vertical were becoming front page news.

The function of the Office of Investigations, in the words of Commissioner Bonnie Garone, is to investigate “waste, fraud and abuse, and hopefully help to eliminate it.” (1/21/04 p. 285) Section 205 of the County Government Law of Nassau County, as amended by Local Law No. 11-1994 states:

The Commissioner of Investigations shall have the power to examine financial and other records of the comptroller and treasurer and to make such other examinations as he or she may deem to be in the best interest of the county, of the accounts, methods and activities of each department, institution, office or agency of the county and of the towns and special districts, except only the County Legislature and the office of legislative budget review, and to report to the County Executive the findings thereon. The Commissioner of Investigations shall have the power to appoint such assistants and deputies within the limits of the appropriation made by the County Legislature as he or she deems necessary for the performance of his or her duties.

In response to allegations made in a letter from the Executive Director of Civil Service the Deputy County Executive for Operations and the Presiding Officer instructed the independent investigator to investigate the claims. The independence of the investigation appears to have been compromised since it was framed by the Deputy County Executive. Furthermore, it did not appear to extend much beyond review of three separate and independent reports, one by the Comptroller, one by the Deputy County Executive for Finance and Budget and one by the Office of Legislative Budget Review. The Commissioner argued, during questioning at one of the Rules Committee hearings, that there was no conflict in basing any determination or conclusion upon the Administration’s report. The Deputy County Executive for Finance also sat on the board of one of the agencies he was investigating. That is not to say that the report was tainted in any way, but the appearance of conflict gives cause for concern.

During the course of her investigation, the Commissioner examined and presented as evidence for her report numerous payroll records, IDIS drawdown schedules, NIFS and NUHRS sheets and various memos among department heads and Civil Service detailing the hiring and payment process for the employees in question. She determined that the Planning Department followed the correct procedures in its attempt to retain those employees and did not try to circumvent civil service regulations. The Commissioner noted that the Director of Civil Service did not provide effective guidance to the Planning Department for those employees working out of title. It is unclear how the Commissioner arrived at this conclusion since it does not appear that she provided enough evidence to support this claim.

In order to avoid duplication of effort, the Commissioner decided not to investigate any issues involving bank accounts, the credit card or the firing of the Executive Director of Civil Service. Since the investigation was limited to examining the two allegations, questions and concerns about other issues were not addressed. The Commissioner determined that those other issues had been sufficiently examined and reported on by the aforementioned offices. As to the firing of the Director of Civil Service and his ensuing lawsuit against the County, she cited her past

experience in the County Attorney's Office and their handling of such matters which would therefore preclude any involvement by her office.

If the investigation had been truly independent the direction of the examination would have been at the discretion of the Commissioner of Investigations and would have broadened as new allegations appeared which the Commissioner of Investigations is empowered to do.

Recommendation: An Office of Investigations can be very important in discovering waste and fraud and helps to maintain the public's trust in government. In any instance when an investigation involves the potential criminality of government officials, it should be conducted by the District Attorney, an independently elected official. If the investigation starts at a lower level, but shows the potential to involve a top executive in the Administration, then the Commissioner of Investigations should turn over her work to the DA to continue. In cases where the investigation of government officials does not involve potential criminal matters, it should be handed over to the County Comptroller. Although the Commissioner of Investigations may have the ability and desire to act independently, any conflict or the appearance of a conflict of interest must be avoided in order to protect the public trust.

Whistle-Blowing

The accusations made by two former employees that their employment was terminated in retaliation for their refusal to abide by the mismanagement, and worse, that they witnessed, must be taken very seriously. In the case where alleged misconduct is being perpetrated by an individual in a position of authority, and where normal oversight may not have sufficient reach, the whistle blower can provide a valuable public service. The County does not have a whistle-blowing law at this time. In response to a request from the Office of Legislative Budget Review, Ruth Markowitz of the County Attorney's office cited the following State statutes as being relevant to County employees:

The County is governed by Civil Service Law §75-b and, like other employers, Labor Law §740 (both of which I'm copying for you below). The language of the two statutes differs somewhat, but in general, both statutes prohibit retaliatory actions against employees for disclosing violations of laws, rules or regulations, testifying at inquiries about such violations, or refusing to participate in activities that violate such laws, rules or regulations. Please note that the protections afforded by both statutes are conditioned on the employee notifying his/her supervisor or otherwise bringing the matter to the attention of the department so that there is an opportunity to correct the violation. (Also, there are federal statutes specific to violations of various regulatory provisions).

1. Civil Service Law §75-b

75-b. Retaliatory action by public employers 1. For the purposes of this section the term:

(a) "Public employer" or "employer" shall mean (i) the state of New York, (ii) a county, city, town, village or any other political subdivision or civil division of the state, (iii) a school district or any governmental entity operating a public school, college or university, (iv) a public improvement or special district, (v) a public authority, commission or public benefit corporation, or

(vi) any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of the state.

(b) "Public employee" or "employee" shall mean any person holding a position by appointment or employment in the service of a public employer except judges or justices of the unified court system and members of the legislature.

(c) "Governmental body" shall mean (i) an officer, employee, agency, department, division, bureau, board, commission, council, authority or other body of a public employer, (ii) employee, committee, member, or commission of the legislative branch of government, (iii) a representative, member or employee of a legislative body of a county, town, village or any other political subdivision or civil division of the state, (iv) a law enforcement agency or any member or employee of a law enforcement agency, or (v) the judiciary or any employee of the judiciary.

(d) "Personnel action" shall mean an action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement or evaluation of performance.

2. (a) A public employer shall not dismiss or take other disciplinary or other adverse personnel action against a public employee regarding the employee's employment because the employee discloses to a governmental body information: (i) regarding a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety; or (ii) which the employee reasonably believes to be true and reasonably believes constitutes an improper governmental action. "Improper governmental action" shall mean any action by a public employer or employee, or an agent of such employer or employee, which is undertaken in the performance of such agent's official duties, whether or not such action is within the scope of his employment, and which is in violation of any federal, state or local law, rule or regulation.

(b) Prior to disclosing information pursuant to paragraph (a) of this subdivision, an employee shall have made a good faith effort to provide the appointing authority or his or her designee the information to be disclosed and shall provide the appointing authority or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety. For the purposes of this subdivision, an employee who acts pursuant to this paragraph shall be deemed to have disclosed information to a governmental body under paragraph (a) of this subdivision.

3. (a) Where an employee is subject to dismissal or other disciplinary action under a final and binding arbitration provision, or other disciplinary procedure contained in a collectively negotiated agreement, or under section seventy-five of this title or any other provision of state or local law and the employee reasonably believes dismissal or other disciplinary action would not have been taken but for the conduct protected under subdivision two of this section,

he or she may assert such as a defense before the designated arbitrator or hearing officer. The merits of such defense shall be considered and determined as part of the arbitration award or hearing officer decision of the matter. If there is a finding that the dismissal or other disciplinary action is based solely on a violation by the employer of such subdivision, the arbitrator or hearing officer shall dismiss or recommend dismissal of the disciplinary proceeding, as appropriate, and, if appropriate, reinstate the employee with back pay, and, in the case of an arbitration procedure, may take other appropriate action as is permitted in the collectively negotiated agreement.

(b) Where an employee is subject to a collectively negotiated agreement which contains provisions preventing an employer from taking adverse personnel actions and which contains a final and binding arbitration provision to resolve alleged violations of such provisions of the agreement and the employee reasonably believes that such personnel action would not have been taken but for the conduct protected under subdivision two of this section, he or she may assert such as a claim before the arbitrator. The arbitrator shall consider such claim and determine its merits and shall, if a determination is made that such adverse personnel action is based on a violation by the employer of such subdivision, take such action to remedy the violation as is permitted by the collectively negotiated agreement.

(c) Where an employee is not subject to any of the provisions of paragraph (a) or (b) of this subdivision, the employee may commence an action in a court of competent jurisdiction under the same terms and conditions as set forth in article twenty-C of the labor law.

4. Nothing in this section shall be deemed to diminish or impair the rights of a public employee or employer under any law, rule, regulation or collectively negotiated agreement or to prohibit any personnel action which otherwise would have been taken regardless of any disclosure of information.

2. Labor Law §740

740. Retaliatory personnel action by employers; prohibition

1. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

(a) "Employee" means an individual who performs services for and under the control and direction of an employer for wages or other remuneration.

(b) "Employer" means any person, firm, partnership, institution, corporation, or association that employs one or more employees.

(c) "Law, rule or regulation" includes any duly enacted statute or ordinance or any rule or regulation promulgated pursuant to any federal, state or local statute or ordinance.

(d) "Public body" includes the following:

(i) the United States Congress, any state legislature, or any popularly-elected local governmental body, or any member or employee thereof;

(ii) any federal, state, or local judiciary, or any member or employee thereof, or any grand or petit jury;

(iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof; or

(iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer.

(e) "Retaliatory personnel action" means the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

(f) "Supervisor" means any individual with an employer's organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains.

2. Prohibitions. An employer shall not take any retaliatory personnel action against an employee because such employee does any of the following:

(a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety;

(b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or

(c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

3. Application. The protection against retaliatory personnel action provided by paragraph (a) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has brought the activity, policy or practice in violation of law, rule or regulation to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice.

4. Violation; remedy.

(a) An employee who has been the subject of a retaliatory personnel action in violation of this section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within one year after the alleged retaliatory personnel action was taken.

(b) Any action authorized by this section may be brought in the county in which the alleged retaliatory personnel action occurred, in the county in

which the complainant resides, or in the county in which the employer has its principal place of business.

(c) It shall be a defense to any action brought pursuant to this section that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section. It shall also be a defense that the individual was an independent contractor.

(d) Notwithstanding the provisions of paragraphs (a) and (c) of this subdivision, a health care employee who has been the subject of a retaliatory action by a health care employer in violation of section seven hundred forty-one of this article may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within two years after the alleged retaliatory personnel action was taken. In addition to the relief set forth in that subdivision, the court, in its discretion, based upon a finding that the employer acted in bad faith in the retaliatory action, may assess the employer a civil penalty of an amount not to exceed ten thousand dollars, to be paid to the improving quality of patient care fund, established pursuant to section ninety-seven-aaaa of the state finance law.

5. Relief. In any action brought pursuant to subdivision four of this section, the court may order relief as follows:

- (a) an injunction to restrain continued violation of this section;
- (b) the reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;
- (c) the reinstatement of full fringe benefits and seniority rights;
- (d) the compensation for lost wages, benefits and other remuneration; and
- (e) the payment by the employer of reasonable costs, disbursements, and attorney's fees.

6. Employer relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.

7. Existing rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract; except that the institution of an action in accordance with this section shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, law, rule or regulation or under the common law.

Recommendation: The County must promote an environment in which both exempt and non-exempt employees are aware of their rights as whistle-blowers, and where they will feel comfortable in coming forward with their allegations. Consideration should be given to the question of whether the County should have its own local law that provides greater protection to its employees.

Appendix

Nassau Checking Account Analysis

Date	Check #	Description	Amount	Item Subtotal	Conditional Allowance	Sustained Disallowance
6/13/2003		American Credit Co.	228.21			
6/13/2003	1013	American Credit Co.	253.60	481.81	355.50	126.31
6/18/2003	1002	Discount Tire	62.00			
7/17/2003	1008	AA Nassau Auto	190.31	252.31	0.00	252.31
8/21/2003	1009	Bradley & Company Appraisal	3,000.00	3,000.00	3,000.00	0.00
6/30/2003	1005	Allied Creditor Service	581.74			
7/3/2003		Poland Spring	1,002.53	1,584.27	1,584.27	0.00
9/22/2003	1019	Staples Envelopes & Labels	75.54			
6/18/2003	1001	Staples Binders	245.00			
10/24/2003	1026	Staples Felt Pens	69.46			
10/22/2003	1024	Staples Labels	43.99	433.99	433.99	0.00
6/24/2003	1003	Laird Plastics (10 pieces Foam Board)	150.00			
6/24/2003	1004	Laird Plastics Delivery	25.00	175.00	175.00	0.00
9/12/2003	1017	NEDC Payroll	3,999.41	3,999.41	3,999.41	0.00
10/15/2003	1022	NEDC Furniture	4,000.00			
11/10/2003	1029	NEDC Furniture	1,176.23	5,176.23	5,176.23	0.00
10/24/2003	1027	Party City Balloons	5.99			
10/22/2003	1023	NY Pizza Dept.	72.59			
10/22/2003	1025	NY Pizza Dept.	13.87	92.45	92.45	0.00
5/19/2003		Salsa Caterers NYS Assembly Puerto Rican-Hispanic Task Force W/MBE Awards	2,500.00	2,500.00	0.00	2,500.00
10/10/2003	1021	LIA Goals Conference	325.00	325.00	325.00	0.00
10/7/2003	1020	Cablevision Lightpath Ceiling-Floor Distributors: 40 Main Street	194.27			
9/10/2003	1015		657.56	851.83	0.00	851.83
11/7/2003	1028	Digital Printery-Presentation Checks	329.99	329.99	0.00	329.99
9/19/2003	1014	National Hispanic Employment Review	1,595.00	1,595.00	0.00	1,595.00
6/9/2003		Black Perspective	1,995.00	1,995.00	0.00	1,995.00
9/5/2003	1010	Sports Authority	125.92			
9/26/2003	1016	DC-3 Catering- Meeting at One West	339.95	465.87	0.00	465.87
9/2/2003	1011	Bagelman	271.79			0.00
9/26/2003	1018	Bagelman	205.07	476.86	0.00	476.86
Totals				<u>23,735.02</u>	<u>15,141.85</u>	<u>8,593.17</u>

Nassau Credit Card Analysis

Type	Date	Description	Amount	Conditional Allowance	Sustained Disallowance
Auto Gas	6/5/2003	Exxon Mobile	27.50	27.50	0.00
Auto Gas	6/15/2003	Exxon Mobile gas	26.25	26.25	0.00
Auto Gas	7/13/2003	Exxon Mobile	24.70	24.70	0.00
Auto Gas	7/20/2003	Exxon Mobile gas	10.36	10.36	0.00
Auto Gas	8/7/2003	Exxon Mobile gas	31.47	31.47	0.00
Auto Gas	8/15/2003	Exxon Mobile	31.00	31.00	0.00
Auto Gas	8/28/2003	Getty	30.00	30.00	0.00
Auto Gas	9/10/2003	Sunoco	18.00	18.00	0.00
Auto Gas	9/11/2003	Exxon Mobile	19.00	19.00	0.00
Auto Gas	9/13/2003	Exxon Mobile	37.00	37.00	0.00
Auto Gas	10/7/2003	Exxon Mobile	32.45	32.45	0.00
Auto Gas	10/9/2003	Sunoco	15.00	15.00	0.00
Auto Gas	10/12/2003	Exxon Mobile	33.50	33.50	0.00
Auto Gas	10/18/2003	Exxon Mobile	32.25	32.25	0.00
Auto Gas	11/5/2003	Sunoco	30.57	30.57	0.00
Auto Gas Total			399.05	399.05	0.00
Auto Maint	6/2/2003	Garden City Car Wash	18.95	18.95	0.00
Auto Maint	6/17/2003	Garden City Car Wash	21.11	21.11	0.00
Auto Maint	6/23/2003	All American Car Wash	17.00	17.00	0.00
Auto Maint	7/1/2003	Big M. Car Wash	18.04	18.04	0.00
Auto Maint	7/9/2003	All American Car Wash	17.00	17.00	0.00
Auto Maint	7/21/2003	County Ford	244.69	244.69	0.00
Auto Maint	7/30/2003	Big M. Car Wash	18.04	18.04	0.00
Auto Maint	8/7/2003	Big M. Car Wash	20.05	20.05	0.00
Auto Maint	8/18/2003	Garden City Car Wash	18.95	18.95	0.00
Auto Maint	8/24/2003	Big M. Car Wash	22.05	22.05	0.00
Auto Maint	9/30/2003	Big M. Car Wash	21.05	21.05	0.00
Auto Maint	10/20/2003	All American Car Wash	24.00	24.00	0.00
Auto Maint Total			460.93	460.93	0.00
Meal	6/11/2003	Jani Rest.	9.50	0.00	9.50
Meal	6/13/2003	Papa Razzi Rest.	35.68	0.00	35.68
Meal	6/21/2003	Ginos Pizza	78.85	78.85	0.00
Meal	6/25/2003	Colony Diner	23.60	0.00	23.60
Meal	6/30/2003	Sarin Thai Cuisine	76.00	0.00	76.00
Meal	7/11/2003	Cheesecake	50.28	0.00	50.28
Meal	7/11/2003	Sparta Family Rest.	9.78	0.00	9.78
Meal	7/15/2003	Bagleman	267.11	267.11	0.00
Meal	7/15/2003	Hoffman's Deli	368.00	368.00	0.00
Meal	7/22/2003	Carle Place Diner	89.88	0.00	89.88
Meal	7/23/2003	La Famiglia Inc.	9.30	0.00	9.30
Meal	7/23/2003	Stop & Shop	64.96	64.96	0.00
Meal	7/30/2003	Seventh St. Caf�	50.40	0.00	50.40
Meal	8/12/2003	Panera Bread	114.50	0.00	114.50
Meal	8/20/2003	Pizza Supreme	14.82	0.00	14.82
Meal	8/20/2003	Carle Place Diner	27.51	0.00	27.51
Meal	8/21/2003	Giovi. Rest.	92.92	0.00	92.92
Meal	8/28/2003	Carle Place Diner	18.41	0.00	18.41
Meal	9/22/2003	Westbury Manor	131.10	0.00	131.10
Meal	10/27/2003	East Wok	30.55	0.00	30.55
Meal Total			1,563.15	778.92	784.23
Meal Disallow	6/5/2003	East Wok	120.00	0.00	120.00
Meal Disallow	7/31/2003	Davenport Printing	318.10	0.00	318.10
Meal Disallow Total			438.10	0.00	438.10

Type	Date	Description	Amount	Conditional Allowance	Sustained Disallowance
Meal Reimb	5/20/2003	Grapevine Rest.	21.10	0.00	21.10
Meal Reimb	6/17/2003	Jani Rest.	71.30	0.00	71.30
Meal Reimb	7/17/2003	Nakisaki Rest	138.44	0.00	138.44
Meal Reimb	8/19/2003	Jani Rest.	58.10	0.00	58.10
Meal Reimb	8/22/2003	Benchmark Caf�	51.14	0.00	51.14
Meal Reimb	8/26/2003	Giovi. Rest.	64.48	0.00	64.48
Meal Reimb	10/11/2003	Panera Bread	129.49	0.00	129.49
Meal Reimb	10/12/2003	Panera Bread	52.49	0.00	52.49
Meal Reimb	10/16/2003	Nakisaki Rest	148.65	0.00	148.65
Meal Reimb	10/21/2003	Panera Bread	39.99	0.00	39.99
Meal Reimb	10/28/2003	Sparta Family Rest.	16.00	0.00	16.00
Meal Reimb Total			791.18	0.00	791.18
Office Equip.	5/23/2003	COMPUSA	409.93	409.93	0.00
Office Equip.	5/29/2003	COREX TECH	217.62	217.62	0.00
Office Equip.	6/9/2003	COMPUSA	434.93	434.93	0.00
Office Equip.	6/13/2003	COMPUSA	173.99	173.99	0.00
Office Equip.	7/9/2003	COMPUSA	792.96	792.96	0.00
Office Equip.	7/13/2003	Roxio/AKSI	86.85	86.85	0.00
Office Equip.	7/20/2003	Handango USD	39.95	39.95	0.00
Office Equip.	8/6/2003	BestBuy.com	130.49	130.49	0.00
Office Equip.	8/14/2003	BestBuy/Credit voucher	-130.49	-130.49	0.00
Office Equip.	10/7/2003	Provantage Corp.	324.94	324.94	0.00
Office Equip.	10/19/2003	Office Max	86.99	86.99	0.00
Office Equip. Total			2,568.16	2,568.16	0.00
Office Supply	6/9/2003	Kinko's	6.49	6.49	0.00
Office Supply	8/17/2003	Kinko's	53.43	53.43	0.00
Office Supply	8/17/2003	Kinko's	3.26	3.26	0.00
Office Supply	8/24/2003	Kinko's	33.15	33.15	0.00
Office Supply	9/22/2003	Staples	107.93	107.93	0.00
Office Supply	10/13/2003	Staples	64.55	64.55	0.00
Office Supply	10/25/2003	Staples	171.59	171.59	0.00
Office Supply	10/25/2003	The Home Depot	95.70	95.70	0.00
Office Supply Total			536.10	536.10	0.00
Reimbursed IDA	5/22/2003	Cooperstown Golf	55.00	0.00	55.00
Reimbursed IDA	5/22/2003	The Inn at Cooperstown	620.00	0.00	620.00
Reimbursed IDA	5/22/2003	Robinson's Service	19.50	0.00	19.50
Reimbursed IDA Total			694.50	0.00	694.50
Reimbursed OS	10/11/2003	Kinko's	121.47	0.00	121.47
Reimbursed OS Total			121.47	0.00	121.47
Reimbursed PS	6/9/2003	Hengstenberg's (Florist)	40.00	0.00	40.00
Reimbursed PS	6/12/2003	Fortunoff	100.00	0.00	100.00
Reimbursed PS	7/10/2003	Tutto Fresco	88.72	0.00	88.72
Reimbursed PS	7/30/2003	All Island Window Tinting	353.44	0.00	353.44
Reimbursed PS	8/19/2003	Walgreen	5.00	0.00	5.00
Reimbursed PS	8/27/2003	Stop & Shop	129.90	0.00	129.90
Reimbursed PS	8/28/2003	TGI Fridays	21.00	0.00	21.00
Reimbursed PS	9/7/2003	Bath & Body Works	34.80	0.00	34.80
Reimbursed PS	10/14/2003	All Island Window Tinting	108.75	0.00	108.75
Reimbursed PS	10/16/2003	Tiffany & Co.	135.96	0.00	135.96
Reimbursed PS Total			1,017.57	0.00	1,017.57

Type	Date	Description	Amount	Conditional Allowance	Sustained Disallowance
Travel	6/6/2003	Central Parking-NYS Commerce	22.00	22.00	0.00
Travel	7/28/2003	Delta Air/Atlanta-Benrubi Brnfield Conf.	361.50	0.00	361.50
Travel	7/28/2003	Delta Air/Atlanta-Sylver Brnfld Conf	361.50	0.00	361.50
Travel	8/27/2003	Hyatt Hotels/DC-Disputed	944.63	0.00	944.63
Travel	8/27/2003	CBCF Housing Deposit	300.00	0.00	300.00
Travel	9/8/2003	Amtrak Go USA-DC	717.00	717.00	0.00
Travel	9/10/2003	Amtrak Credit Voucher DC	-717.00	-717.00	0.00
Travel	9/10/2003	51st Parking Garage	26.00	26.00	0.00
Travel	9/10/2003	Delta Air Salt Lake, UT- Benrubi xchange, cancelled	100.00	0.00	100.00
Travel	9/11/2003	Pesce	109.27	109.27	0.00
Travel	9/11/2003	Radison Hotel P. Sylver	308.36	308.36	0.00
Travel	9/11/2003	Radison Hotel L. Stegletz	171.75	171.75	0.00
Travel	9/14/2003	Holiday Inn P. Sylver NYSAC	215.07	0.00	215.07
Travel	9/14/2003	Holiday Inn P. Sylver Dup Charge	215.12	0.00	215.12
Travel	9/15/2003	Hilton Garden Inn M. Marquez NYSAC	361.00	0.00	361.00
Travel	9/16/2003	Sheraton Hotels P. Sylver	875.43	0.00	875.43
Travel	9/18/2003	US Airways Benubi EPA	81.50	0.00	81.50
Travel	9/18/2003	US Airways Benubi EPA	81.50	0.00	81.50
Travel	10/4/2003	Gurney's Inn-Disputed	1.42	0.00	1.42
Travel	10/10/2003	the Borgata	10.36	0.00	10.36
Travel	10/25/2003	Garden City Hotel	239.28	0.00	239.28
Travel	11/10/2003	CBCF Housing Credit	-132.00	0.00	-132.00
Travel	11/22/2003	Garden City Hotel Credit	-239.28	0.00	-239.28
Travel Total			4,414.41	637.38	3,777.03
Travel Reimb.	6/6/2003	Delta Air	459.00	0.00	459.00
Travel Reimb.	6/6/2003	Delta Air	459.00	0.00	459.00
Travel Reimb.	6/6/2003	Delta Air	459.00	0.00	459.00
Travel Reimb.	6/6/2003	Delta Air	459.00	0.00	459.00
Travel Reimb.	9/10/2003	Etrusco, Washington DC	100.00	0.00	100.00
Travel Reimb.	9/29/2003	Renaissance	536.32	0.00	536.32
Travel Reimb. Total			2,472.32	0.00	2,472.32
Not Defined	6/12/2003	AOL Online	23.90	0.00	23.90
Not Defined	6/21/2003	CVS Misc. Items	26.28	0.00	26.28
Not Defined	9/10/2003	FEDES	16.30	0.00	16.30
Not Defined Total			66.48	0.00	66.48
Reimb	10/14/2003	Media Ventures	370.00	0.00	370.00
Reimb Total			370.00	0.00	370.00
Grand Total			15,913.42	5,380.54	10,532.88

Source: HUD Monitoring Report

GARY I. WADLER, MD, FACP, FACSM

INTERNAL MEDICINE
SPORTS MEDICINE

February 9, 2005

Hon. Judith Jacobs
Presiding Officer
Nassau County Legislature
1 West Street
Room 112
Mineola, NY 11501

Re: **Office of Legislative Budget Review - A Report on Rules Committee Hearing:
Economic Development Vertical and Related Matters**

Dear Judy:

As I had indicated to you by phone on February 8, 2005, there is a statement on page 44 of the above captioned report that is in error.

Specifically, the report reads with respect to The Nassau County Sports, Entertainment & Tourism Association, Inc. (hereinafter "SET"): "The original board consisted of Peter Sylver, Michael Hollander, Executive Director of the Long Island Convention and Visitors Bureau and Sports Commission, Susan Marenoff, the General Manager of the New York Power, Dr. Gary Wadler, President of the Nassau County Sports Commission, and Matthew Schectner, a sports promoter." The report goes on to state on page 44 that "Dr. Wadler and Matthew Schectner were removed from the board."

For the record, I have never been an incorporator, member of, or in any way associated with SET.

I would greatly appreciate if the record would reflect this fact.

Sincerely,



Gary I. Wadler, M.D