

NASSAU COUNTY INTERIM FINANCE AUTHORITY
MEETING OF THE DIRECTORS
MINUTES OF NOVEMBER 29, 2016

The Directors of the Nassau County Interim Finance Authority met on November 29, 2016 at 7:07 PM at the Marriott Long Island Hotel & Conference Center located at 101 James Doolittle Blvd, Uniondale, NY 11553.

Directors present: Adam Barsky, Chairman
Paul Annunziato John Buran
Paul Leventhal
Lester Petracca
Howard Weitzman

Directors absent: Christopher Wright

Staff present: Evan Cohen, Executive Director
Carl Dreyer, Treasurer
Laurie Giardina, Corporate Secretary
Maria Kwiatkowski, Deputy Director
Jeremy Wise, General Counsel

1. Call to Order/Roll Call

The meeting was called to order at 7:07 PM.

2. Approval of Minutes

On a motion by Director Buran, the Directors approved the minutes from the meeting on October 13, 2016.

Positive votes: 5 Abstention: 1 (Director Annunziato) Negative votes: 0

Resolution No. 16-642

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE OCTOBER 13, 2016 MEETING OF THE DIRECTORS OF THE NASSAU COUNTY INTERIM FINANCE AUTHORITY

RESOLVED, that the Minutes of the meeting of the Authority held on October 13, 2016 are hereby approved and all actions taken by the Directors present at such meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Authority.

* * *

3. Payment of Professional Fees in Connection with a Proposed NIFA Refunding

The Directors were asked to approve a resolution for payment of professional fees to Orrick Herrington & Sutcliffe in connection with a proposed NIFA refunding that was cancelled. The payment is not to exceed \$25,000.

On a motion by Director Leventhal, the Directors approved the resolution.

Positive votes: 6 Negative votes: 0

Resolution No. 16-643

PAYMENT OF PROFESSIONAL FEES IN CONNECTION WITH A PROPOSED NIFA REFUNDING

RESOLVED, that the materials presented to this meeting (the “Materials”) are ordered to be filed with the records of the Nassau County Interim Finance Authority (the “Authority”); and be it further

RESOLVED, that based upon the discussion in the Materials, the Directors approve of the total payment of up to \$25,000 in connection with a NIFA refunding that NIFA was preparing to undertake to assist Nassau County, but was not completed for the reasons described in the Materials, and be it further

RESOLVED, that staff may take all actions and do all things that they deem necessary to carry out the intent of this resolution.

* * *

4. Consideration of County Contract for J. Anthony Enterprises, Inc.

The contract is to provide construction services for a new Police Department garage located in Bethpage, NY. The contract is valued at \$5,746,000.

On a motion by Director Buran, the Directors approved the contract with J. Anthony Enterprises, Inc. in the amount of \$5,746,000.

Positive votes: 6 Negative votes: 0

Resolution No. 16-644

CONSIDERATION OF COUNTY CONTRACT FOR J. ANTHONY ENTERPRISES, INC.

RESOLVED, that the materials presented to this meeting of the Directors (the “Materials”) are ordered to be filed with the records of the Nassau County Interim Finance Authority (the

“Authority”); and be it further

RESOLVED, that any actions authorized by these resolutions shall have no force or take effect until such time as the Directors have approved Nassau County’s Multi-Year Financial Plan for FY 2017 – FY 2020; and be it further

RESOLVED, that based upon the discussion in the Materials and pursuant to Section 3669 2(d) of the Authority Act, the Authority hereby approves the County’s Contract for J. Anthony Enterprises, Inc., which is projected to cost \$5,746,000; and be it further

RESOLVED, that staff may take all actions and do all things that they deem necessary to carry out the intent of this resolution.

* * *

5. Order to Nassau County to Compile Certain Labor Related Documents

The Directors were asked to approve a resolution to order the County Attorney to provide NIFA complete contracts related to each of the unions by January 31, 2017.

On a motion by Director Buran, the Directors approved the resolution.

Positive votes: 6 Negative votes: 0

Resolution No. 16-645

ORDER TO NASSAU COUNTY TO COMPILE CERTAIN LAOR RELATED DOCUMENTS

RESOLVED, that the materials presented to this meeting (the “Materials”) are ordered to be filed with the records of the Nassau County Interim Finance Authority (the “Authority”); and be it further

RESOLVED, that based upon the discussion in the Materials and pursuant to Section 3669 of the Authority Act, the County Attorney, because of his role as chief legal counsel to the County, is ordered to prepare comprehensive labor agreements, as outlined in the Materials, before January 31, 2017; and be it further

RESOLVED, that staff may take all actions and do all things that they deem necessary to carry out the intent of this resolution.

* * *

6. Consideration of Bond Anticipation Notes Borrowing by Nassau County

The Directors were asked to approve a resolution for the County to issue taxable Bond Anticipation Notes for up to \$98,600,000. This issuance would be used to refund three series of County BANs scheduled to mature on December 15, 2016.

On a motion by Director Leventhal, the Directors approved the resolution.

Positive votes: 6 Negative votes: 0

Resolution No. 16-646

CONSIDERATION OF ISSUANCE OF BOND ANTICIPATION NOTES BY NASSAU COUNTY

RESOLVED, that the materials presented to this meeting (the “Materials”) are ordered to be filed with the records of the Nassau County Interim Finance Authority (the “Authority”); and be it further

RESOLVED, that based upon the discussion in the Materials and pursuant to Section 3669 2(e) of the Authority Act, the Authority has reviewed the terms of the County’s proposed issuance of taxable BANs and hereby approves said borrowing on the condition that total proceeds, consisting of par and original issue premium, cannot exceed \$98,600,000 plus costs of issuance, and be it further

RESOLVED, that the final terms of the sale are subject to the review and approval of the Chairman of the Authority or his designee(s); and be it further

RESOLVED, that staff may take all actions and do all things that they deem necessary to carry out the intent of this resolution.

* * *

7. Consideration of Tax Anticipation Notes Borrowing by Nassau County

The Directors were asked to approve a resolution for the County to issue Tax Anticipation Notes for up to \$260,000,000 plus costs of issuance. This issuance would be used to meet cash flow deficits expected to occur until taxes are received.

On a motion by Director Annunziato, the Directors approved the resolution.

Positive votes: 6 Negative votes: 0

Resolution No. 16-647

CONSIDERATION OF ISSUANCE OF TAX ANTICIPATION NOTES BY NASSAU COUNTY

RESOLVED, that the materials presented to this meeting (the “Materials”) are ordered to be filed with the records of the Nassau County Interim Finance Authority (the “Authority”); and be it further

RESOLVED, that based upon the discussion in the Materials and pursuant to Section 3669 2(e) of the Authority Act, the Authority has reviewed the terms of the County’s proposed issuance of TANs and hereby approves said borrowing on the condition that total proceeds, consisting of par and original issue premium, cannot exceed \$260,000,000 plus costs of issuance, and be it further

RESOLVED, that any actions authorized by these resolutions shall have no force or take effect

until such time as the Directors have approved Nassau County's Multi-Year Financial Plan for FY 2017 – FY 2020; and be it further

RESOLVED, that the final terms of the sale are subject to the review and approval of the Chairman of the Authority or his designee(s); and be it further

RESOLVED, that staff may take all actions and do all things that they deem necessary to carry out the intent of this resolution.

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8. Disapproving the County's Multi-Year Financial Plan for Fiscal 2017-2020, and Requiring that the County Shall Provide a Modified Plan by December 5, 2016

The Directors were asked to reject the County's Multi-Year Financial Plan for Fiscal 2017-2020.

On a motion by Director Annunziato, the Directors approved the resolution to reject the County's Multi-Year Financial Plan.

Positive votes: 6 Negative votes: 0

Resolution No. 16-648

DISAPPROVING THE COUNTY'S MULTI-YEAR FINANCIAL PLAN FOR FISCAL 2017 – 2020, AND REQUIRING THAT THE COUNTY SHALL PROVIDE A MODIFIED PLAN BY DECEMBER 5, 2016

WHEREAS, Nassau County is operating in a control period, which the Nassau County Interim Finance Authority ("NIFA") imposed on January 26, 2011; and

WHEREAS, the proposed Multi-Year Financial Plan Fiscal 2017 – 2020 ("Proposed Plan"), as presented to the County Legislature by the County Executive in September 2016, had revenue sources, including a new "public safety" fee on traffic and parking tickets that required action by the Legislature; and

WHEREAS, before Election Day, the Legislature approved substantially all of the County Executive's Proposed Plan while deferring a vote on certain ordinances, including the aforementioned public safety fee; and

WHEREAS, on November 21, 2016, the Legislature held its deferred vote on certain amendments to revenue-generating ordinances funding the County's Multi-Year Financial Plan Fiscal 2017 – 2020 (the "Adopted Plan") by (i) eliminating elements of the public safety fee equivalent to approximately \$36 million in projected revenues for FY 2017, and (ii) substituting projected revenues from a partial amnesty program designed to collect fees under a 2013 County law that is currently being challenged in court; and

WHEREAS, the NIFA staff has prepared a report on the Adopted Plan and its funding sources, dated November 29, 2016 (“Report”);

NOW, THEREFORE, BE IT RESOLVED, that the NIFA Directors hereby adopt the Report; and

BE IT FURTHER RESOLVED, that pursuant to Sections 3667(2)(e) and 3669(2)(a) of the NIFA Act, NIFA hereby disapproves the Adopted Plan, because it:

1. Fails to contain projections of revenues and expenditures that are based on reasonable and appropriate assumptions and methods of estimation; and
2. Fails to provide that operations of the County will be conducted within the cash resources available according to NIFA's revenue estimates; and
3. Fails to comply with the requirements of the NIFA Act;

BE IT FURTHER RESOLVED, that pursuant to Section 3667(2)(g) of the NIFA Act, NIFA hereby requires that the County shall provide NIFA no later than December 5, 2016 or such later date as approved by the Chairman of NIFA, with a modification of the Adopted Plan; and

BE IT FURTHER RESOLVED, that pursuant to Sections 3667(2)(g) and 3669(2)(a)(iv) of the NIFA Act, NIFA stands ready, should the County fail to provide a modified plan in sufficient detail or within the time period specified above, to make an appropriate finding of such failure, and to formulate and adopt its own modifications to the Adopted Plan, such modifications to become effective on their adoption by NIFA.

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9. Order Requiring County Officials to Submit Modifications to the Financial Plan on or Before December 5, 2016

The Directors were asked to approve resolution ordering the County to submit a modified Financial Plan by December 5, 2016.

On a motion by Director Leventhal, the Directors voted to amend the resolution to include “revenue enhancements” to offset the reduction in revenues.

The resolution amending the resolution was passed by the Directors.

Positive votes: 5 Negative votes: 0

Director Weitzman made a motion to further amend the resolution increasing the required amount of verified expenditure reductions or revenue enhancements from \$36 million to \$76 million. He then made the following statement:

I agree with my NIFA colleagues that it is necessary to reject the Nassau County 2017 budget tonight. The Board directs the County to reduce its expenditures by \$36 million, the first time

NIFA has taken such an action. However, I have concluded that more cuts are necessary to plug the gaps in the budget to meet the NIFA mandated budget goals, calculated in accordance with Generally Accepted Accounting Principles (“GAAP”) of a maximum \$60 million budget deficit in 2017, and no deficit in 2018. I am, therefore, voting against this resolution as it will not resolve the budget crisis our County faces.

The NIFA staff has calculated that even after reducing its expenses by the NIFA mandated \$36 million the latest 2017 County budget submission will face a projected deficit of \$106 million. County officials have informed our staff that they intend to meet the NIFA mandated \$60 million maximum GAAP deficit by not borrowing to pay \$60 million for real estate tax refunds. Not borrowing to pay refunds is not the same as cutting expenses. These refunds will still have to be paid and the County cannot afford to pay them out of operations. Nassau is once again “kicking the can down the road.” Unfortunately the road has run out and the County is at the edge of a cliff. NIFA should not give Nassau credit for deferring these refunds. I also believe that NIFA is being overly optimistic in counting \$39 million in revenue from the new Public Safety Ticket Program given the statements by various parties that they will challenge the legality of this program and the tendency of local courts to allow moving violations to be plea bargained to less expensive violations. The County has told NIFA staff that if these risks materialize during 2017 it will introduce a new tax dedicated to funding real estate tax refunds. The idea of the County Executive and the County Legislature voting for a huge, mid-year tax increase in an election year is not credible. NIFA should require the County to make additional cuts of \$40 million now to meet its 2017 budget target.

If the remaining years of the multi-year plan were realistic and credible, the County’s proposed optimistic budget plan might be acceptable. Unfortunately, the County’s finances get much worse from 2018-2020. NIFA staff has calculated budget risks in each of those years of over \$220 million and has concluded that “the plan does not contain a reliable or realistic course for effectuating long-term balance.” The County has included only \$30 million in those years for real estate tax refunds, counting on its new Disputed Assessment Fund (“DAF”) to significantly reduce this liability. But the DAF is certain to be challenged and its legality will not be established for years. That creates a new \$40 million annual budget hole. The County is including \$20 million per year in savings/revenues from the privatization of the County’s sewer assets. This scheme has yet to be shown to be feasible, and the recent increase in interest rates, which is expected to continue, has made its feasibility less likely. Nassau is also including \$42 million in additional annual revenue or reduced expenses based upon actions to be requested of New York State. This is an annual exercise that predictably ends in futility. Of course, all of the risks contained in 2017 carry over to 2018-20. Any reasonable analysis of the out years of the multi-year plan must conclude that the County will require major revenue increase or expense reductions to bring these years into balance.

Nassau County has borrowed almost \$300 million from NY State since 2012 to make its full annual pension payments. NY State put this program in place to help municipalities cope with rising pension contributions caused by the Great Recession of 2008. The crisis is over and Nassau needs to end this borrowing. The County cannot pay its real estate tax refunds without borrowing as well. Counting the over \$300 million owed by the County for the Utility Case, its

unpaid real estate tax liability is probably approaching \$1 billion which will ultimately have to be borrowed. It is for all of these reasons that I believe the \$36 million in cuts requested of the County is insufficient. Since NIFA cannot force revenue increases, the only way NIFA can require a balanced budget is through expense reductions. Responsible expense reductions of between 2% and 3% need lead time to be put in place. This amount is not overwhelming and could be offset by revenue increases. The time to begin is now.

Director Wright who was unable to attend the meeting asked that the following statement written by him be read into the record.

Due to prior-committed business travel, I was unable to attend this evening's meeting, and will likely be unable to attend the meeting next week, as well (for the same reason).

Had I been in attendance, I would have joined the board in its vote to reject the County's budget. The NIFA Staff have done a fine job of enumerating the risks associated with the 2017 budget, and the very real expenses of Nassau County, when compared to some unrealistic revenue expectations, leave rejection as the only course of action for NIFA.

I would not have voted for the second resolution, and would have joined Howard Weitzman (and any others who also joined Howard) in opposing the resolution directing the County to cut \$36 million from the budget and re-submit a plan to NIFA. The amount of \$36 million is less than half of what NIFA should be requiring of the County in order to move the meter on reducing chronic historical and projected deficits which will require NIFA to maintain a control period which leaves elected officials in the position of being unable to fully exercise the authority of the offices to which they were elected.

NIFA has talented and capable staff, a seasoned and experienced consultant on the bench and ready to take the field, and the legal means by which to leverage those professionals to quickly develop a plan to require - or make - sufficient cuts in order to bring the budget closer to balance in 2017, thereby enabling final balance in 2018. Needless to say, the focus of those cuts would best be in departments with substantial spend, and where larger dollar amounts can be achieved with smaller percentages of cutbacks and service impacts. But they can, and should, be made, if the County's elected officials continue to be determined to attempt to spend more than the County brings in.

Director Annunziato said that he strongly disagreed with Directors Weitzman and Wright and stated several ways the County is improving its financial condition. He stated that the County's GAAP deficit was \$219 million in 2014 and \$105 million in 2015. He believed it would be less than \$80 million this year and less than \$60 million next year. He stated that it is important to understand that projected risks are not the same as a deficit. He concluded that of the \$142 million of identified risks, \$36 million of risks is what NIFA is not convinced will materialize. That leaves \$46 million of risks that may be a difference of opinion and \$60 million of deficit NIFA is willingly accepting to let the County borrow to satisfy certain judgments.

On a motion by Director Weitzman, the Directors voted on and rejected the motion to amend

the resolution increasing the required amount of verified expenditure reductions or revenue enhancements from \$36 million to \$76 million.

Positive votes: 1 Negative votes: 5

On a motion by Director Leventhal, the Directors voted on and approved the following amended resolution.

Positive votes: 5 Negative votes: 1 (Director Weitzman)

Resolution No. 16-649

ORDER REQUIRING COUNTY OFFICIALS TO SUBMIT MODIFICATIONS TO THE FINANCIAL PLAN ON OR BEFORE DECEMBER 5, 2016

WHEREAS, on November 21, 2016, the Legislature held a deferred vote on certain amendments to revenue-generating ordinances funding the County's Multi-Year Financial Plan Fiscal 2017 – 2020 (the "Adopted Plan"), thereby causing a shortfall in the Adopted Plan by at least \$36 million; and

WHEREAS, on today's date, the Nassau County Interim Finance Authority ("NIFA") has disapproved the Adopted Plan and required the County to provide a modified plan (the "Modified Plan") for NIFA's consideration by December 5, 2016; and

WHEREAS, NIFA, pursuant to Section 3669 2(f) of the NIFA Act, shall issue to appropriate officials of the County such orders as it deems necessary to accomplish the purposes of the Act, including, but not limited to, timely and satisfactory approval of a financial plan;

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Section 3669 2(f) of the NIFA Act, NIFA hereby orders the officials of the County to deliver by December 5, 2016 or such later date as shall be approved by the Chairman of NIFA, a Modified Plan with the following details:

1. The Modified Plan shall not include any revenues from the Legislature's income and expense law amnesty program ordinance passed on November 21, 2016;
2. The Modified Plan shall include at least \$36 million in verified expenditure reductions or revenue enhancements for FY 2017 in order to offset the reduction to revenues referenced in paragraph numbered 1 (at the same level of detail provided in the County's Supporting Schedules to the budget);
3. The Modified Plan shall not reduce the \$75 million appropriation for tax certiorari payments included in the Adopted Plan;
4. The Modified Plan shall not eliminate or reduce sources of revenues in the Adopted Plan other than to conform to the public safety fee ordinance passed on November 21, 2016 by the

County Legislature, and shall not add or increase expenditures in the Adopted Plan.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that NIFA staff shall deliver a copy of this Order by email to the County Executive, the Deputy County Executive for Finance, and each member of the County Legislature.

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10. Adjournment

The Chairman made a motion to adjourn. The meeting was adjourned at 7:45 PM.

Respectfully submitted,

Laurie A. Giardina
Corporate Secretary