



Cattaraugus County Industrial Development Agency

Community Benefit

Report of Examination

Period Covered:

January 1, 2013 — October 8, 2014

2014M-344



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

April 2015

Dear Agency Officials:

A top priority of the Office of the State Comptroller is to help local officials manage government resources efficiently and effectively and, by so doing, provide accountability for public dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments and certain other public entities statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard governmental assets.

Following is a report of our audit of the Cattaraugus County Industrial Development Agency, entitled Community Benefit. This audit was conducted pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for agency officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

Industrial Development Agencies (IDAs) are independent public corporations whose purpose is to promote, develop and assist industrial, manufacturing, warehousing, commercial, research and recreation facilities. The overall goals of IDAs are to advance the job opportunities, general prosperity and economic welfare of the people of the State. The Cattaraugus County Industrial Development Agency (CCIDA) was created under General Municipal Law (GML).

IDA economic incentives to companies include sales and mortgage tax exemptions and real property tax abatement. In return, many of the projects that benefit from IDA assistance have agreements to create new jobs or retain existing jobs in the community, or both, and provisions for payments in lieu of taxes (PILOTs)¹ to help offset the loss of revenues from the tax exemptions provided. Typically, projects that receive IDA benefits involve the acquisition, construction or major renovations of buildings or other structures and generate short- and long-term employment in construction and operations-related jobs.²

The CCIDA is governed by a Board which comprises seven members who are appointed by the Cattaraugus County Legislature. The Board is responsible for the general management and control of the CCIDA's financial and operational affairs. The Board appoints the Executive Director and Executive Assistant/Chief Financial Officer who together are responsible for day-to-day operations. The CCIDA funds its operations primarily with fees charged for processing applications.

According to its annual reporting submitted to the Office of the State Comptroller (OSC) and meeting minutes, as of December 31, 2013 the CCIDA had a total of 34 active projects with more than \$227 million³ in total projected capital investments.

Objective

The objective of our audit was to review the CCIDA's process for evaluating, approving and monitoring projects and addressed the following related question:

¹ PILOTs are amounts paid for certain tax-exempt parcels in lieu of real property taxes that would otherwise have been paid, had the property not been tax-exempt.

² An IDA generally enters into a lease or lease-back agreement for the property owned or leased by the business which allows the IDA to offer such benefits, as the property is considered tax-exempt IDA property.

³ Includes the \$4.3 million Ontario Knife project that was omitted from the CCIDA's annual report in error

- Does the Board ensure that CCIDA projects economically benefit Cattaraugus County (County)?

**Scope and
Methodology**

We examined the CCIDA's records and project files for the period January 1, 2013 through October 8, 2014. We also analyzed related documents for projects initially sponsored as early as 2004 that were still active during our audit period.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix B of this report.

**Comments of
Agency Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with Agency officials. Agency officials were given an opportunity to respond to our findings and recommendations within 30 days of receiving the draft report, but they did not respond.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Secretary's office.

Community Benefit

GML provides that certain types of projects are eligible for IDA economic assistance to promote, develop and assist industrial, manufacturing, warehousing, commercial, research and recreation facilities. Typically, IDA projects are awarded tax exemptions for real property, mortgage and State sales and use taxes. Because these tax benefits result in a cost to the community, it is important for IDAs to consider a project's eligibility for assistance and to develop project evaluation criteria, which should be consistently applied when making project selection decisions.

Board-adopted policies should also address verifying the information on the project applications, preparing cost-benefit analyses and periodically monitoring project performance. The IDA Board should also establish policies, such as a recapture policy, to provide guidance to IDA officials who should, in turn, implement procedures to monitor project performance. Such procedures would show whether the community is benefiting from the business activities, as stated in the application. Other factors to consider when awarding projects are the ability to create or retain jobs, the prevailing wage levels and related employee benefits. It is also important that IDA officials ensure that all PILOT payments are properly billed and collected.

We found that the CCIDA was effective in its efforts to promote, develop and assist in economic development projects in the County. However, we identified some opportunities for the CCIDA to improve controls and accountability to assure the community it is receiving the expected benefits. CCIDA officials do not verify the investment and job information provided when businesses apply for financial assistance. Additionally, CCIDA officials have not established adequate procedures for meaningful cost-benefit analyses. As a result, the Board may not have accurate and meaningful information on which to make its decisions.

Further, CCIDA officials do not adequately monitor ongoing project activity. The CCIDA does not obtain annual confirmations from all active projects and does not verify the accuracy of annual reported data obtained. Without assurance that the amounts reported represent actual activity, which are monitored and compared with expected activity, the Board cannot be sure that the community is receiving the expected economic benefits.

Project Review and Approval

IDAs are required by law to establish a Uniform Tax Exemption Policy (UTEP) and Eligible Project Policy (Project Policy). A UTEP provides the Board with detailed procedural guidelines to make project

approval or denial decisions and should include specific criteria for evaluating each project application based on the community's needs.

The Board has established a UTEP and a Project Policy that specify the types of the projects that the Board and CCIDA officials will consider when determining whether a project is eligible for assistance. In addition, the CCIDA requires each applicant to complete a cost-benefit analysis form (CBA). The CBA presents key information that can be used to evaluate a project's anticipated benefits to the community. Some expected benefits could include preserving or creating jobs, capital investing that could increase the tax base and increasing sales tax revenue. These benefits can then be compared with the tax exemptions indicated on the CBA. After CCIDA officials review the application to ensure that the policy criteria is met, it is forwarded to the Board for review and approval or denial.

The CCIDA Board approved actions on 14 projects totaling \$52.5 million in projected investments from January 1, 2013 through June 26, 2014. We examined four project applications totaling \$25 million in projected capital investments. In general, CCIDA officials properly evaluated the project applications, ensuring that the project types were consistent with the CCIDA policies. However, we identified an improvement opportunity for the CCIDA with respect to its project evaluation process. We found that CCIDA officials have not established adequate procedures to ensure the reliability of investment and job information provided to the CCIDA on applications and CBAs. The Board also has not adopted a policy that addresses evaluating CBA criteria and conclusions to ensure a consistent and objective evaluation process.

For the projects we examined, we found no evidence that the CCIDA analyzed the reliability of data provided by the applicants or documented the conclusion on the CBAs. While there was a completed CBA for each project, CCIDA officials did not calculate the cost-benefit ratio⁴ or explain what an acceptable ratio would be. Such a ratio could be a valuable tool that measures the direct community cost⁵ against the community benefits⁶ resulting from the proposed investment by the business. For example, a project with a 1:10 cost-benefit ratio means that for every \$1 in costs, the community receives \$10 in benefits.

CCIDA officials could have calculated the cost-benefit ratios based on verified information, used them to support conclusions on whether

⁴ An analysis to identify the relationship between the estimated costs and estimated benefits of a proposed project

⁵ The total real property, sales and mortgage tax exemptions.

⁶ The total capital investment, PILOT payments, wages and employee benefits.

the resulting ratios were acceptable and provided this information to the Board. The Board could have then used the ratios as added criteria when it evaluated the projects' eligibility for financial assistance. We calculated the cost-benefit ratios for three of the projects based on the information provided on the CBA and found two ratios were 1:8 and 1:33, while the remaining project's CBA indicated there was no direct community cost involved.

By not verifying the reliability of information presented on CBA forms and developing and using cost-benefit ratios as additional project eligibility criteria, the Board may not be provided with accurate and meaningful information on which to make its decisions.

Monitoring

A significant IDA board responsibility is to monitor and evaluate the performance of businesses receiving financial assistance to determine whether the businesses are meeting the goals included in their project applications. Without effective monitoring, an IDA will not be in a position to effectively identify and address business performance shortfalls which could result in the community not receiving the expected benefits.

The CCIDA requires certain annual reporting from businesses that have active projects, such as notices of default events, sales tax exemptions, employment activity, salary and wages, PILOT payments made and the status of bond financing for applicable projects. However, we found that the Board was not provided complete information and may not have been provided accurate information with which to adequately monitor projects and evaluate whether they achieved, or made reasonable progress toward, targeted capital investment or employment projections stated in their applications. CCIDA officials did not obtain or did not verify information submitted by the businesses as part of their annual reporting to the CCIDA⁷ and its annual reporting to OSC.

Capital Investment – The amount of capital investment that a business intends to make is included as part of the project application and cost-benefit analysis where applicable. The amount of this investment will eventually impact the assessed value of the project's real property and directly affect the amount of taxes that the local taxing jurisdictions will receive after the facility is constructed or renovated. Therefore, it is important that CCIDA officials verify the amount of capital that the project applicants invest to ensure that the actual investment agrees with the amount on the application and in the cost-benefit analysis.

⁷ This data is then submitted to the New York State Authorities Budget Office.

CCIDA officials did not adequately monitor businesses' capital investments. Businesses indicate on their applications the intended capital investments. However, they are not required to, nor do they, submit periodic progress reports or any other documentation to evidence their capital investments. Additionally, CCIDA officials did not request an estimate of assessable capital investments on the project applications that they could later compare to the change in the assessed values of the completed projects' real property.

Had CCIDA officials requested this information and completed this analysis they would have the needed information to effectively monitor whether businesses were meeting their capital investment goals and provide remedial action when needed. Without any such analysis, CCIDA officials have no assurance that the businesses are meeting their investment goals.

Job Performance – A primary goal of an IDA is to advance job opportunities in the municipality in which the project is located. When job performance is less than expected, a recapture policy and agreement provisions can be applied.

Although the Board adopted a Recapture Policy,⁸ it does not have adequate procedures in place to ensure that valid job information is provided or to provide remedial action to businesses with less-than-expected job creation and retention activity.

Businesses are required to annually report to the CCIDA full-time equivalent employment data and related salaries. Annually, the CCIDA's external auditor sends a confirmation form to certain⁹ businesses requesting current employment figures to use in its annual report and for job performance monitoring. These forms are to be certified by a business executive attesting to the reliability of the information reported.

Ten businesses, or about 40 percent of those with active projects reported in 2013, responded to the auditor's confirmation requests. CCIDA officials stated that it was difficult to get businesses to provide this information. We reviewed all 13 confirmations¹⁰ and found that six did not include a signature of a business executive attesting to the provided job information's reliability. In addition, 10 did not provide any employment figures and three provided employment figures without supplying any supporting documentation (e.g.,

⁸ The CCIDA's Recapture Policy was adopted in December 2013.

⁹ Confirmations were sent to certain projects with active PILOT agreements and outstanding debt on revenue bonds. CCIDA officials could not verify which of these projects the CPA sent the confirmations to.

¹⁰ One business completed more than one confirmation.

payroll records) to verify the number of jobs reported. Although not required by law and not requested by the CCIDA, one way to verify employment would be to require that the business include Form NYS-45¹¹ with the annual confirmation.

By not obtaining and verifying job data, CCIDA officials rely on the incomplete and potentially inaccurate job data presented by businesses to evaluate the projects' job performance and report to OSC and the public.

PILOT Payments – When an IDA grants real property tax exemptions for an approved project, it may recapture a portion of the real property tax in the form of PILOTs. The business pays these amounts in lieu of real property taxes that would otherwise have been paid if the property, or a portion thereof, were not tax-exempt. The IDA reports the amounts of PILOTs paid by project owners in its annual financial report.

The CCIDA does not monitor or verify the billing or receipt of PILOT payments by affected taxing jurisdictions. As a result, the community has not received the expected benefit of at least \$36,000 in PILOT payments. We reviewed the agreements for six of the 18 projects with current PILOTs and computed payments due for 2013 totaling approximately \$323,000. We compared them to the actual payments made to the local taxing jurisdictions to determine if PILOT billings were accurate, complied with the agreements and were paid in a timely manner.

We found that five PILOTs were not properly billed for 2013 by the affected taxing jurisdictions, resulting in approximately \$16,500 in underpayments. Additionally, because these PILOTs were not properly billed, an additional \$19,500 was underpaid over the life of the PILOT agreements.

Without accurate PILOT data and annually verifying PILOT billings and receipts by local taxing jurisdictions, CCIDA officials are at a disadvantage in monitoring the success of projects or providing remedial action when needed.

Recommendations

The Board should:

1. Establish and adopt policies and procedures critical to project evaluation and define applicable criteria to ensure consistent application.

¹¹ Form NYS-45 is a quarterly form required to be filed by employers with the New York State Department of Taxation and Finance and the New York State Department of Labor for tax withholding and unemployment insurance purposes

2. Develop a cost-benefit analysis ratio (or ratios) that meets its needs, is reflective of its economic environment and is an appropriate and reasonable measurement.
3. Develop procedures to ensure that businesses' annually reported data is evaluated to appropriately monitor performance and take appropriate action if their performance is less than anticipated or required information is not received.

CCIDA officials should:

4. Develop procedures to ensure that all application data is complete and accurate.
5. Require project owners to annually provide capital investment, job information and PILOTs paid, including supporting documentation of each and certifying signatures.
6. Notify the Board if they do not receive the required information.
7. Notify taxing jurisdictions and request updated bills be sent to businesses when bills do not agree with the PILOT agreements.

APPENDIX A

CCIDA ACTIVE PROJECTS¹²

Project Name	Project Amount	Exemptions	PILOT Payments	Net Employment Change
4646 Genesee LLC	\$4,580,800	\$19,421	\$21,062	20
Ashford Office Complex	\$3,800,000	\$96,269	\$50,870	47
Casadent LLC	\$800,000	\$4,584	\$5,332	0
Cattaraugus County Rehabilitation	\$1,706,000	\$0	\$0	14
Dominion Transmission	\$10,351,450	\$127,943	\$191,779	1
DST Properties	\$1,256,716	\$16,788	\$3,064	12
Ellicottville Hotel - Wingate Inn	\$6,500,000	\$50,697	\$67,718	12
ETJM Properties LLC	\$5,750,000	\$107,579	\$8,211	100
Gernatt Asphalt	\$6,120,000	\$0	\$0	20
Gowanda Electronics	\$3,000,000	\$0	\$0	33
Holimont Inc. - Quad Lift	\$401,954	\$20,000	\$0	40
Holimont Inc. - Various	\$677,290	\$0	\$0	0
Indeck	\$86,500,000	\$0	\$0	0
JCC Development Corp.	\$5,130,000	\$0	\$0	156
Kreinheider Properties	\$2,200,000	\$6,340	\$10,768	50
MarkJon Properties LLC	\$1,625,000	\$21,003	\$23,275	27
Olean General Hospital	\$15,000,000	\$0	\$0	0
Olean YMCA	\$3,700,000	\$0	\$0	36
Parent Education Program	\$400,000	\$0	\$0	20
Park Centre Development	\$3,000,000	\$89,835	\$228,876	139
Rte 9 Travel Center	\$110,000	\$3,139	\$2,305	1
Sanzo Beverage	\$1,400,000	\$12,223	\$19,224	2
Spragues Washington Square LLC	\$700,000	\$15,008	\$13,351	30
St. Bonaventure University	\$2,345,000	\$0	\$0	0
St. Bonaventure University	\$8,000,000	\$0	\$0	0
St. Bonaventure University	\$10,105,000	\$0	\$0	7
St. Bonaventure University	\$14,225,000	\$0	\$0	0
Suburban Adult Services, Inc.	\$850,000	\$0	\$0	0
WestMont Ridge Phase 1	\$2,800,000	\$160,000	\$0	0
Win Sum Ski Corp	\$13,000,000	\$264,815	\$188,854	0
Win Sum Ski Corp	\$2,805,000	\$211,162	\$0	0
Win Sum Ski Corp	\$2,250,000	\$706	\$79	0
Win Sum Ski Corp	\$2,161,540	\$0	\$0	0
Totals	\$223,250,750	\$1,227,512	\$834,768	767

¹² The information presented as of December 31, 2013 was obtained from the CCIDA's annual report, which excluded the \$4.3 million Ontario Knife project in error.

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to review the CCIDA's process for evaluating, approving and monitoring projects. For selected projects we extended our audit period back to the date of project inception, as early as 2004. To achieve our audit objective and obtain valid audit evidence, we performed the following audit procedures:

- We interviewed the Board and CCIDA officials and staff to understand and assess the CCIDA's processes and procedures.
- We reviewed the CCIDA's bylaws and policies, including the UTEP, Eligible Project Policy and Recapture Policy, to identify written criteria outlining an applicant's eligibility for sponsorship and the benefits that are offered.
- We selected four high-risk projects for review to determine if they were evaluated and approved consistent with CCIDA policies.
- We reviewed all the 2013 annual reporting by businesses to evaluate whether the Board and CCIDA officials were getting adequate information to assess the businesses' performance and complete accurate financial reports.
- We reviewed six of 18 PILOT agreements and payments to ensure that they were accurate, complied with the agreements and were timely. After determining eight agreements did not yet require a payment, we focused our sample to include projects with the highest potential risks.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX C

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