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TOWN OF BROOKHAVEN
LOCAL DEVELOPMENT CORPORATION

- - - - -x

BOARD MEETING
HELD BY ZOOM VIDEOCONFERENCE

- - - - -x

September 15, 2021
9:22 a.m.

TRANSCRIPT OF PROCEEDINGS

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A P P E A R A N C E S :

MEMBERS :

FREDERICK C. BRAUN, III
MARTIN CALLAHAN
FELIX J. GRUCCI, JR.
LENORE PAPROCKY
GARY POLLAKUSKY
ANN-MARIE SCHEIDT

ALSO PRESENT :

LISA M.G. MULLIGAN, CHIEF EXECUTIVE OFFICER
LORI J. LaPONTE, CHIEF FINANCIAL OFFICER
JAMES M. TULLO, DEPUTY DIRECTOR
JOCELYN LINSE, EXECUTIVE ASSISTANT
TERRI ALKON, ADMINISTRATIVE ASSISTANT
AMY ILLARDO, ADMINISTRATIVE ASSISTANT
ANNETTE EADERESTO, ESQ., AGENCY COUNSEL
WILLIAM F. WEIR, ESQ., NIXON PEABODY
HOWARD R. GROSS, ESQ.,
WEINBERG GROSS & PERGAMENT, LLP

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MR. BRAUN: Next we will move into the regularly scheduled meeting of the Local Development Corporation. It is Wednesday, September 15th. It is 9:22. A quorum is present.

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Counselor?

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MR. WEIR: This meeting is being conducted electronically via Zoom pursuant to Senate bill 50001 and Assembly bill 40001, which amend the New York Open Meetings Law to allow for public meetings to be conducted electronically due to COVID.

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MR. BRAUN: Next order of business, approval of our minutes of our August 18th meeting.

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A motion, please.

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MR. POLLAKUSKY: So moved.

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MR. CALLAHAN: Second.

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MR. BRAUN: Any questions on those minutes, clarifications?

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(No response.)

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MR. BRAUN: Hearing none, on the vote, Mr. Callahan?

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MR. CALLAHAN: Yes.

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MR. BRAUN: Ms. Paprocky?

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MS. PAPROCKY: Yes.

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MR. BRAUN: Mr. Pollakusky?

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MR. POLLAKUSKY: Yes.

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MR. BRAUN: Mr. Grucci?

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MR. GRUCCI: Yes.

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MR. BRAUN: Mr. Braun votes yes, the

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motion carries, the minutes are approved.

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Lori, I'll turn it back over to you.

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MS. LaPONTE: Okay.

12

Included in your packet is actual

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versus budget July 31st results. Lisa, I

14

don't know if you can share.

15

MS. MULLIGAN: I'm working on it.

16

MS. LaPONTE: That's okay.

17

So as Lisa is pulling it up, we're

18

doing the LDC, correct and it's Lori LaPonte,

19

I just want to confirm.

20

For the month of -- there we go. Okay,

21

thank you, Lisa.

22

So this is actual versus budget for the

23

month of July and I also include year-to-date

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and I also include a comparison to a pro rata

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budget, the seven months and I also

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(inaudible) give you more information than you'll ever need, the annual budget, so I like to put everything out there so you can see where the numbers are going.

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So concentrating on the third column, the seven-month number, that's our year-to-date column. We've had no closings, the only thing we've had incomewise is our annual admin fees for the LDC projects and we've also had some small interest income on our investments.

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Our insurance, part of that is an accrual because we just recently paid it, but we set up accrual year-end -- I mean yearly to make sure we're on target with it and our estimates are on target with what we got the bills from the risk manager.

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Website costs are our monthly our website fees. Accounting fees, those are so some small fees for our audit; again, we're accruing them. Legal are -- a lot of the legal is not pure attorney cost, it's mostly transcriptions of all the meetings that has been necessary during COVID and some public

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notices and then some legal costs, so

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year-to-date we're at a negative 15,000;

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again, keeping in mind we have a fund balance

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in the Local Development, so that is

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reasonable expectation.

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MR. GRUCCI: Lori, do you think we're

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on track to --

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MS. LaPONTE: Fred, you're on mute.

10

Fred, you're on mute. I'm sorry, Felix.

11

MR. GRUCCI: That's okay.

12

MS. MULLIGAN: Sorry.

13

MR. BRAUN: Go ahead, Felix.

14

MR. GRUCCI: Lori, the amended budget

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column, I assume that's what we approved to go

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forward with for the year of 2021?

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MS. LaPONTE: Yes, that was the amended

18

to take into account the cost sharing

19

agreement.

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MR. GRUCCI: Right.

21

Do you think that we're on target to

22

meet or beat that number?

23

MS. LaPONTE: So far it looks like

24

we're going to be very close, if not be a

25

little bit better.

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2 MS. MULLIGAN: Great. Thank you.

3 MR. BRAUN: Lori, do you just want to
4 mention the early discussions and estimated
5 fees for our annual audit?

6 MS. LaPONTE: Yes, yes.

7 I spoke with the firm PKF O'Connor
8 Davies and they -- I asked them for a fee, not
9 just one year because I figured why not
10 two-year and they gave us the same fee with
11 the two percent increase.

12 We have a mandatory partner rotation
13 and the partner that they're putting on for
14 one year I actually know and have worked with
15 him, so it's a nice relationship and the
16 people that we work with the audit are
17 retaining, so I was comfortable with that.

18 MR. BRAUN: I think the two percent
19 increase is wonderful; if we could get it for
20 five years, I'd sign up right now.

21 MR. CALLAHAN: Sounds good.

22 MR. BRAUN: All right. We need a
23 motion to accept Lori's report.

24 MR. POLLAKUSKY: So moved.

25 MR. BRAUN: Thank you.

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Second?

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MR. CALLAHAN: Second.

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MR. BRAUN: Marty.

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On the vote, Mr. Callahan?

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MR. CALLAHAN: Yes.

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MR. BRAUN: Ms. Paprocky?

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MS. PAPROCKY: Yes.

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MR. BRAUN: Mr. Pollakusky?

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MR. POLLAKUSKY: Yes.

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MR. BRAUN: Mr. Grucci?

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MR. GRUCCI: Yes.

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MR. BRAUN: Mr. Braun votes yes; the

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report is accepted.

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Lisa?

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MS. MULLIGAN: The next item on the

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agenda is an update on -- from OSC.

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Lori, do you want to just give a quick

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overview or do you want me to?

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MS. LaPONTE: Sure, I mean I'll start

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and Lisa, please join because you were part of

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it and so was Fred.

23

The three of us had an exit conference

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call the other day with the OSC. They pointed

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out there was a minor question about an admin

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2 fee being billed to a project that we billed
3 it out as one admin fee being that the project
4 had two parts to it, but it closed so tightly,
5 we had done one admin fee. Looking further,
6 it should have been probably split out, but
7 we're not talking -- it's a thousand dollar
8 difference. They're not even sure if they're
9 going to put that in the report, but they told
10 it to us, so I'm sharing it with you.

11 The other comment they have is
12 oversight and monitoring of the project, its
13 goals and Lisa, maybe you can start on some of
14 that conversation.

15 MS. MULLIGAN: Well, the long and the
16 short of it is that although they told us
17 they're contemplating listing that as a
18 "finding," the truth of it is, is that it's a
19 best practice recommendation, they were very
20 clear with us that we're following the law, we
21 have not done anything -- they didn't find
22 anything other than the thousand dollar that
23 we had done wrong and the -- I think that --
24 they were back and forth if they were going to
25 put it in as a finding or as a best practice,

1

2 but I suspect it's probably going to go in as
3 a finding just because otherwise they don't
4 really have a report, but they told us flat
5 out we're following the law, we're doing
6 everything we're supposed to do and really
7 this is the best practice recommendation and
8 what they told us is that as they continue to
9 audit LDC's, if they find statewide that this
10 is a common practice that everyone's totally
11 following the law, that they might bring their
12 report to the State and say maybe you should
13 change the law so that they start doing this
14 best practice.

15 We're going to get the report, Lori,
16 they said in about 30 days and then we have 30
17 days to respond to it.

18 MR. BRAUN: I suspect it will be close
19 to year-end before this is finally wrapped up.

20 MS. MULLIGAN: Yeah.

21 MR. GRUCCI: Lisa, I'm sorry, I missed
22 what the issue was, I heard the thousand
23 dollars and the best practice, but what was it
24 that they were concerned was happening with
25 that thousand dollars?

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MS. MULLIGAN: That we didn't -- so it's two separate things, that we didn't bill for about a thousand dollars and so they told us flat out that it's de minimus, an annual compliance fee, but I think because they don't really have anything to write us up about, they might end up including that, although they said quite clearly that it was de minimus.

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MS. LaPONTE: They might not write us up on it.

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MS. MULLIGAN: Yeah.

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MS. LaPONTE: I feel like they're not going to, but it's out there.

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MS. MULLIGAN: And the other piece of it was that they wanted our resolutions to have more specificity and what's in the resolution drives the track and so they acknowledge that what we're doing follows the law, but they think it would be a best practice to have more specificity in our resolutions, therefore, having us track additional things, but that's a best practice.

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MR. WEIR: The resolutions do refer

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2 back to the application (inaudible).

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4 MS. MULLIGAN: And we showed them the
5 point in the resolution, but they didn't feel
6 that it was specific enough.

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7 MR. BRAUN: When you think who the LDC
8 projects are or which they are, hospitals,
9 we've done libraries, lifetime living, others
10 that serve the system and the spectrum. It's
11 almost as if they -- use a hospital, how do
12 you know that they use the money to buy the
13 equipment, set up the emergency room, set up
14 this particular practice and set up that
15 particular practice? I mean it really gets
16 into the weeds much more so than the law
17 requires and we can -- if they put that in the
18 report, we can respond in kind.

18

19 Any other questions?

19

20 MR. CALLAHAN: Yeah, Fred.

20

21 So all the other IDA's that got audited
22 from the --

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23 MS. LaPONTE: LDC.

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24 MR. CALLAHAN: -- OSC. I'm sorry, LDC
25 for the OSC up in Albany, considering that was
26 very minor per se, how did the other IDA's do?

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MR. WEIR: So one other LDC was criticized for doing financings for two major universities in their town because they were "not major employers." They're the two largest employers in the town, but they're not major employers. I mean their level of criticism defies belief is the only way I can describe it.

MS. MULLIGAN: What they told us -- because I asked what other IDA's, what they had been finding and -- I'm sorry, LDC's -- and what they told us was that we were the second LDC that they had audited and so far on Long Island, they hadn't really found anything. They did tell us that they're hearing there is more dramatic results coming from some LDC's upstate, but I don't think -- from what they said to us, it didn't sound like it was our type of LDC, it sounded like they were LDC's, other types of LDC's.

MR. WEIR: For example, Suffolk County -- almost every county in New York State created an LDC to finance the tobacco -- when the tobacco money that they were

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receiving a dozen years ago, 15 years ago,

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they wanted to get that money up front, so

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they created LDC's (inaudible) that payment

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stream, the tobacco companies basically issued

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bonds, got money up front and they paid those

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bonds off as the money comes due, so they

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could put money into local municipalities up

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front and it also, you know, value of money,

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it's better to have the money today than over

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20 years, it's also to be honest with you took

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the bankruptcy risk of the tobacco companies

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out of -- put them on the County's books, so

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the bondholders took that risk.

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LDC's have been created by

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municipalities all across New York State since

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the 1960's to do a whole range of different

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projects and there's thousands of them out

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there and they're just starting to look at

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them.

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Why they chose this LDC and another one

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on Long Island who creates a tax-exempt bond

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financing I'm not sure, but they're certainly

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not going after, you know, LDC's that have

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been done to do a whole range of very large

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municipal projects and they're done for

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legitimate purposes. I'm not criticizing

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LDC's, LDC's are an incredible tool for local

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municipalities, but the State, the Office of

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State Comptroller never had authority to audit

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them until recently, so they were kind of were

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out there under the radar and they're started

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looking at them, but why these two LDC's were

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chosen first, I don't know.

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MS. LaPONTE: I wanted to mention that

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they mentioned one of the LDC's had been set

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up by a fire department or district to buy a

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fire truck upstate, so they already are seeing

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some interesting things.

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MR. WEIR: Yeah and that's probably

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doable under the 1411 and there's a whole

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range of things that have been done. You

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know, fire districts (inaudible), you have a

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fire district and a fire company that under

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contract with the fire district and they're

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now creating LDC's.

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Monroe County created some, how shall I

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say it, dubious LDC's that got into some

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little trouble. Created things like, you

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2 know, to buy the equipment for 911 centers and
3 things of that nature. Got way -- they were
4 created for viable purposes and then got off
5 doing things that were beyond their mission
6 and then got in trouble.

7 MR. CALLAHAN: So I guess we're doing a
8 good job.

9 MR. WEIR: Yes. You guys are doing a
10 good job, you're keeping to your mission.

11 MR. GRUCCI: Lori, regarding the
12 specificity of the resolutions, did they give
13 you any kind of a model that they're looking
14 for as far as content of the resolution?

15 MS. LaPONTE: No, they did not. They
16 said that we're following exactly what the --
17 what the law requires us to say, our
18 resolutions are written up that way exactly as
19 the law is required to say and you know, we
20 know that these LDC's are operating within
21 their mission, we send out annual reports, we
22 get job numbers from the projects even though
23 we're not basing the applicability of the LDC
24 tax-exempt bond financing on job numbers, so
25 we do know these projects, we know them in the

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area, we visited them, we speak with them

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often, so, you know, they've given us no

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guidance on what they want to see, but they

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want to see something; correct, Lisa, Fred?

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MR. BRAUN: Yes.

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MS. MULLIGAN: Yes.

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MR. GRUCCI: If we're following the

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letter of the law, sounds to me as if we're

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getting tagged for following the law.

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MS. PAPROCKY: Yeah.

12

MR. WEIR: They want to impose things

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on the IDA that are not required by either

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federal or state law including the Internal

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Revenue code.

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When it comes to issuing tax-exempt

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bonds, we go by the federal Internal Revenue

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code and the New York not-for-profit

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corporation law. If they want some other

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procedures that they recommend, they can make

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that recommendation, but it's a

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recommendation. So I think you guys are doing

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an excellent job.

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MR. BRAUN: Felix, we'll get a draft of

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their report, we'll get a chance to comment on

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that, then we'll get a final report and we'll respond.

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MR. GRUCCI: Okay.

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MR. BRAUN: Got to be a little careful as to how you respond, but we'll respond.

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MS. LaPONTE: Because the response will be combined with the report, so that will be given to the public, so our response will be carefully, succinctly put together and include all items we want to point out and just as a side note, I had asked them straight out, I said so what if we find a project isn't doing what they can; there's no recapture per se, I don't know, Bill, I don't even know how you --

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MR. WEIR: Again --

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MS. LaPONTE: -- redeem tax-exempt bonds.

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MR. WEIR: If you've issued tax-exempt bonds and they use the money inappropriately or they do other things that violated the tax code, they have to answer to the Internal Revenue code -- Internal Revenue Service and the bonds go taxable, they will be sued by the bondholders, they will be sued by the Internal

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Revenue Service and they could also, if the

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bond was sold publicly in a public

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transaction, they can be sued by the SEC.

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They have far greater problems than recapture

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because there's nothing to recapture.

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MS. LaPONTE: That's what I'm saying.

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If they don't follow --

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MR. WEIR: We would have a duty if we

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knew that a project violated the Internal

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Revenue code, as the issuer of the bonds, we

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would have to report that to the IRS.

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MS. LaPONTE: I'm not even sure how you

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could monitor somebody violating the Internal

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Revenue code.

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MR. WEIR: You can't because you don't

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know about it unless -- we had one situation

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where a borrower did something with tax-exempt

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bonds that they told us several years after

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the fact and we had to correct it and we're

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doing a voluntarily compliance program with

22

that borrower with the Internal Revenue

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Service.

24

They had, let me say less than accurate

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legal advice from their law firm who was

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handling the sale of an asset, who did not understand the tax code.

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MR. GRUCCI: When we issue those tax-exempt bonds, is there any kind of reporting vehicle that the recipient needs to provide us on any kind of an interim basis --

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MR. WEIR: They have to --

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MR. GRUCCI: -- as to what they're doing with the money?

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MR. WEIR: Well, yes. Well, they have to give reports to the LDC and to the trustee, they also have to do every five years a report to the IRS, so they have, you know, myriad of reporting requirements which are designed to detect any problems really ahead of time.

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We also -- I mean typically the borrowers that we work with use very sophisticated law firms to handle their stuff so they avoid this. One situation we had, they went to a . . . more of a real estate firm to handle what they thought was a routine real estate issue and neither they nor their counsel had recognized the ramifications of a decision that was made. Had they talked to --

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2 and that was actually an IDA bond, but had
3 they talked to the IDA and us ahead of time,
4 it would have been very simple to structure
5 the project appropriately, but they had --

6 MR. GRUCCI: I just want to follow up.

7 The reporting that they do specifically
8 to us, do we have an obligation to audit that
9 report or send inspectors out to verify that
10 their reports are indeed accurate?

11 MR. WEIR: We would really have no way
12 to do that. I mean that's the role of the
13 IRS, Felix.

14 MR. GRUCCI: Okay. I just want to make
15 sure that we don't have that obligation.

16 MR. WEIR: Yeah. We have no
17 obligation. However, it comes such that . . .
18 the bonds are issued by the IDA or the LDC, if
19 we are aware of an event of taxability, we
20 have to deal with it at that point, but the
21 actual filings they do give us, we have no
22 obligation to audit them or to make, you know,
23 unless it rises to the level of that
24 taxability, to contact the IRS.

25 MR. GRUCCI: Thanks, Bill.

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MR. WEIR: You're welcome.

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MR. BRAUN: Any other questions on the controller's audit?

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(No response.)

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MR. BRAUN: I suspect we'll back with you to talk about it again next month or certainly the month after, if not before.

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Lisa, you got one other item?

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MS. MULLIGAN: I do. There's one other item on the agenda. This is going back a little ways, but we need to ratify -- because of the costs that Lori mentioned earlier, we need to ratify the support from New York State EDC, the Cooperstown conference and also the LIBDC Montauk conference, so Fred needs to recuse himself, so -- and we didn't have enough votes at the last meeting, so we're just ratifying the LDC's role in paying their portion of the . . .

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(Inaudible comments.)

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MS. MULLIGAN: Ratify the LDC's portion of that support.

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MR. BRAUN: May I have a motion to that effect?

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MR. GRUCCI: Did you need to recuse
yourself from this, Fred?

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(Inaudible comments.)

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MS. MULLIGAN: Okay. So Fred is
recusing himself.

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MR. WEIR: He's stepping out of the
room.

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MS. MULLIGAN: Yes.

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So can I have a motion?

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MR. GRUCCI: So moved.

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MR. CALLAHAN: So moved.

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MR. GRUCCI: Second.

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MS. MULLIGAN: Second?

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MS. SCHEIDT: Ann-Marie.

16

MS. MULLIGAN: Thank you.

17

Fred usually does this part, but,

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Felix, would you vote?

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MR. GRUCCI: Yes.

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MS. MULLIGAN: Gary?

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MR. POLLAKUSKY: Yes.

22

MS. MULLIGAN: Ann-Marie?

23

MS. SCHEIDT: Yes.

24

MS. MULLIGAN: Marty?

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MR. CALLAHAN: Yes.

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MS. MULLIGAN: Lenore?

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MS. PAPROCKY: Yes.

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MS. MULLIGAN: Okay. It passes. I don't know if Fred usually says that, but . .

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. Fred, you can come back in.

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MR. BRAUN: Thank you very much.

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If there's no other business to be brought before the Local Development Corporation, I'll entertain a motion to

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adjourn.

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MR. POLLAKUSKY: So moved.

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MR. BRAUN: Who's the second?

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MR. GRUCCI: Felix Grucci.

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MR. BRAUN: Thank you, Felix.

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On the vote, Mr. Callahan?

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(No response.)

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MR. BRAUN: Mr. Callahan, you with us?

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MR. CALLAHAN: Yes.

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MR. BRAUN: On the vote, yes?

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MR. CALLAHAN: Yes.

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MR. BRAUN: Ms. Paprocky?

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MS. PAPROCKY: Yes.

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MR. BRAUN: Ms. Scheidt?

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MS. SCHEIDT: Yes.

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MR. BRAUN: Mr. Pollakusky?

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MR. POLLAKUSKY: Yes.

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MR. BRAUN: Mr. Grucci?

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MR. GRUCCI: Yes.

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MR. BRAUN: Mr. Braun votes yes, we are
adjourned, it is 9:45.

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(Time noted: 9:45 a.m.)

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I, JOANN O'LOUGHLIN, a Notary Public
for and within the State of New York, do hereby
certify that the above is a correct transcription
of my stenographic notes.

JOANN O'LOUGHLIN