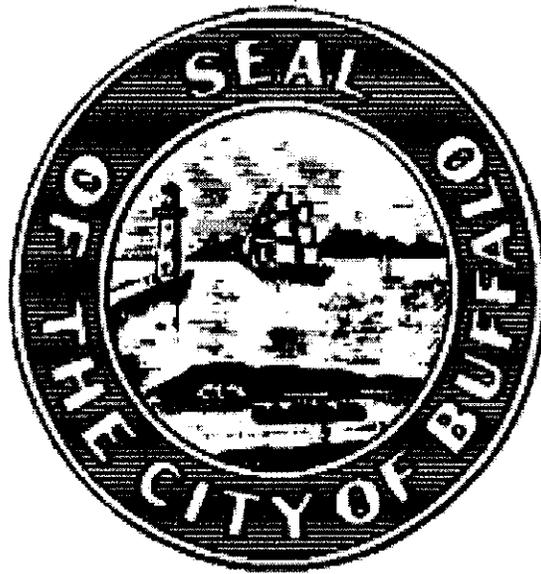


CITY OF BUFFALO
DEPARTMENT OF AUDIT & CONTROL

AUDIT REPORT ON THE
BAILEY AMHERST DISTRICT
MANAGEMENT ASSOCIATION

ANDREW A. SANFILIPPO
COMPTROLLER



FOR THE PERIOD
JULY 1, 2005 THROUGH JUNE 30, 2007

DARRYL MCPHERSON
CITY AUDITOR

SEPTEMBER 2008

City of Buffalo

DEPARTMENT OF
AUDIT AND CONTROL
COMPTROLLER'S OFFICE
1230 City Hall
Buffalo, New York 14202

ANDREW A. SANFILIPPO
COMPTROLLER

DARRYL McPHERSON
CITY AUDITOR

September 24, 2008

The Honorable Common Council of the City of Buffalo

We have performed an examination of the accounts and records of the Bailey Amherst District Management Association (BADMA) for the period July 1, 2005 through June 30, 2007. We present herewith our Findings for the period then ended.

Our examination was made with knowledge of Government Auditing Standards, issued by the Comptroller General of the United States and Standards for the Professional Practice of Internal Auditing, as promulgated by the Institute of Internal Auditors. These standards require that we plan and perform the examination to afford a reasonable basis for our judgments and conclusions regarding the organization, program, activity or function under examination. An audit also includes assessments of applicable internal control and compliance with requirements of law and regulations when necessary to satisfy audit objectives.

**ANDREW A. SANFILIPPO
COMPTROLLER**

BACKGROUND

In 1985, the Bailey Amherst Business Improvement District (the "District") was established in the City Charter pursuant to the provisions of Section 24-d of the General City Law and the provisions of Article 2-B of the General City Law relating to the establishment of business improvement districts.

There have been various agreements between the City of Buffalo (the "City") and the Bailey Amherst District Management Association ("BADMA"). The BADMA is a not for profit corporation, created according to requirements in the City Business Improvement District Law. Its purpose is to carry out the activities stated in the District Plan, and to advise the City of the needs of the District.

The District boundaries include all properties fronting on Bailey Avenue from Stockbridge and Hewitt Avenues to Phyllis Avenue. This includes tax lot address numbers 2981, 2992 thru 3204, 3206 and 3208. The District shall also include sixteen properties on Kensington Avenue, at the intersection of Kensington and Bailey Avenues, having tax lot address numbers 1083 and 1086 through 1142.

Management Services and Funding

The BADMA is to provide services which include pavement and landscape maintenance, snow plowing of sidewalks, security and other feasible services to improve the District area image.

The primary source of funding for BADMA is through an annual fee (referred to as "Special Assessments) on real properties within the District. The maximum annual special assessment, exclusive of debt service, is limited to 20% of the total general city taxes levied in that year against real properties in the District. Each year of the agreement the City's Department of Assessment and Taxation will send out the special assessment bills on July 1, separate from City tax bills. The Comptroller of the City will hold these revenues in a separate district account, to be disbursed semi-annually.

The City's Department of Assessment and Taxation has no legal authority to enforce the collection of the Bailey Amherst Special Assessment Charge and properties in the District subject to this fee cannot be foreclosed by the City as the charge is not for services provided by the City, nor is it a tax levied against the property.

Community Concerns

In a letter dated March 31, 2008, University District Councilmember Bonnie Russell requested the Comptroller to perform an audit of BADMA's books and records pursuant to Part 4 Section D of the Contract between the City and BADMA.

The letter stated that the request was being made in response to complaints from members of BADMA and residents of the Bailey Amherst Business Improvement District. Complaints cited

were non-performance or poor performance of services required by the contract with the City, nonpayment of vendor's invoices, and the nonpayment of the special assessment fee by a major business in the District.

Councilmember Russell requested a non-biased report for use by all concerned.

AUDIT OBJECTIVE

Provide an independent assessment of the effectiveness of with regards to the performance of the intended mission of the Bailey Amherst Business Improvement District for all interested parties. Verify adherence to the various terms of the contract with the City, to BADMA by-laws, and confirm the propriety of the expenditures of the funds received from the special assessment.

AUDIT FINDINGS

Bailey Amherst District Management Association is not currently operating according to the District Plan By-Laws

The nine (9) member Board of Directors; consisting of five (5) real property owners, one (1) tenant leasing space, a representative of the Mayor, a representative of the Comptroller and a representative of the Common Council, is responsible for developing a budget and the day-to-day operations. This includes the awarding of contracts and the hiring of staff, if necessary.

Currently, there is no active Board of Directors, all Directors' terms having expired. The last formal meeting held was on March 6, 2006. Minutes from that meeting do not indicate those in attendance. The business of BADMA appears to be conducted by the President, the only Officer position in the by-laws currently filled. The other unfilled positions are Vice-President, Secretary and Treasurer. It appears that the President is currently performing the function of all these unfilled positions.

Contract between City and BADMA has expired

The contract expired December 31, 2007 and has not been renewed. Though the City contracts with BADMA through the Office of Strategic Planning, there does not appear to be any coordination with BADMA's activities and the Office of Strategic Planning. Any City oversight seems to have been done only by the District Councilmember.

Arrears forgiven

In the minutes of March 6, 2006 member arrears were to be forgiven. A letter was supposed to be sent to the City and the affected members. We could find no evidence of the issuance of such a letter, or any communication to the City informing them of the Board's actions.

Records requested not available

Despite numerous requests, certain records were not provided. We were provided certain, but not all, bank records requested. We were not provided evidence of mandatory insurance, or copies of invoices we requested. A copy of the District's By-Laws had to be obtained from the District Councilmember.

Services Provided

While reviewing services that BADMA intended to provide, as outlined in their proposed services, including landscape and pavement maintenance, litter receptacle pick-up, street furniture maintenance, and security services, we could only locate contracts for snowplowing. According to their self-produced ledger, various vendors were paid for maintenance-type services, but no invoice copies were produced.

The District's attorney was paid for services, though repeated requests for invoices were not produced in a timely manner. It is not clear what services were provided as there are no new contracts or matters for negotiation that would require legal intervention, particularly without a Board to authorize them.

RECOMMENDATION

Due to a lack of cooperation regarding the review of various records, or the seeming lack of records, we were unable to give a complete overview of the financial position of the Bailey Amherst District Management Association.

We can however, cite that this organization is not functioning as a viable entity. It is essentially being run by one person, allegedly with some assistance from the attorney representing it. As noted there is no acting Board of Directors, and there is no contract with the City.

It is our recommendation that the City not enter into a new contract with BADMA and that steps be taken to dissolve this District and return unspent funds to the City. The Common Council should determine what outstanding invoices are valid and should be paid. Upon that determination, valid invoices should be transmitted to the Division of Accounting, which will pay them out of funds previously collected by the City on behalf of the District. Any remaining funds should be disbursed to the members on a pro-rata basis.