



- *Accountability*
- *Transparency*
- *Integrity*

Review of Public Complaint

Columbia Economic Development Corporation

April 27, 2015

PC-2015-01

The Complaint

The Authorities Budget Office (ABO) is empowered by its governing statutes to “initiate formal investigations in response to complaints or appearance of non-compliance by an authority” (Sections (6)(2)(d) of Title 2 of Public Authorities Law).

On October 15, 2014, the ABO received a complaint from GhentCANN, an association of taxpayers, property owners, and other residents of Columbia County concerning the conveyance of a 33 acre parcel owned by the Columbia Economic Development Corporation (CEDC) to DNJ Properties, LLC to facilitate expansion of Ginsberg’s Institutional Foods, Inc. (Ginsberg Foods). The complainant alleges that the sale of this property for \$1 violated sections 2896 and 2897 of the Public Authorities Law requiring that a public authority dispose of property for not less than fair market value following an open bidding process.

The complainant also alleges that certain members of the CEDC board participated in this transaction despite having potential conflicts of interest or the appearance of a conflict of interest. Specifically, the Ginsberg Foods Chief Executive Officer served on the CEDC board while this project was before the board, and the CEDC President was owner and Chief Executive Officer of an engineering firm engaged by Ginsberg Foods on the project. The complainant alleges that these relationships resulted in professional service contracts being authorized without board approval and favorable financial assistance being given to the project. A copy of the complaint is attached to this report as Appendix I.

Scope of the Review

As part of our inquiry, we interviewed members of the CEDC Executive Committee, CEDC staff, and select County officials. We also reviewed the minutes of CEDC board meetings and Executive Committee meetings from January 2012 through December 2014, reviewed CEDC’s Code of Ethics, and examined CEDC’s documents and e-mails related to the Ginsberg Foods project. Individuals were not placed under oath, no subpoenas were issued, and the information obtained was voluntarily provided and gathered through a review of public records. This report is based on and reflects only the information and documents that were known to be available and provided.

Columbia Economic Development Corporation (CEDC)

The CEDC is a local development corporation formed under Section 1411 of Not for Profit Corporation Law. CEDC was created to encourage the growth of industrial and manufacturing facilities, to create and improve job opportunities, and to reduce unemployment in the county. CEDC carries out this mission by issuing low interest loans for business startups and expansions, assisting businesses obtain state and

federal grants, providing training programs to small businesses, and assisting businesses with site location and zoning issues.

CEDC is governed by a 24 member board of directors, three of whom serve ex-officio (the Chair of the County Board of Supervisors, the Chair of the Columbia County IDA, and the President of Columbia-Greene Community College). Two directors may be appointed by the Chair of the County Board of Supervisors. The remaining directors are elected by the board for three year terms. There are currently four vacancies on the Board. CEDC has seven staff. The County Commissioner for Planning/Economic Development serves as the Executive Director for CEDC as well as for the Columbia County Industrial Development Agency (CCIDA).

In general, the Executive Director negotiates a financial assistance agreement with a business before the project is presented to the CEDC or CCIDA boards for the necessary approvals. CEDC has an Executive Committee currently comprised of five board members. The committee discusses CEDC's operations, loans, and marketing, as well as economic development projects and activities within the county, and provides feedback to the Executive Director on proposed financial assistance for projects. Similar to CEDC's Executive Committee, the CCIDA board Chair and Vice Chair provide feedback to the Executive Director on the financial assistance being proposed prior to a project being presented to the CCIDA board.

The Ginsberg Foods Project

Ginsberg's Institutional Foods, Inc. (Ginsberg Foods) is a food service distributor business that expressed interest in expanding its existing operations in Columbia County. The CEDC proposed selling to Ginsberg Foods property owned by CEDC located one mile from the company's existing facility. The project proposed to build a refrigerated warehouse and truck maintenance facility at an estimated cost of \$12 million, and to provide additional space for the company to relocate from its existing facility in the Town of Ghent. It was estimated the project would create an additional 25 jobs and retain 254 jobs.

By 2014, Ginsberg Foods was approved to receive over \$4 million in financial assistance. This assistance consisted of CEDC selling its property, appraised at \$280,000, to Ginsberg Foods for \$1; CCIDA tax credits estimated at \$2.29 million; \$995,000 in Excelsior Job Program Tax Credits from the Empire State Development Corporation; and a \$516,000 grant from the New York State Office of Community Renewal. In addition, Ginsberg Foods secured a \$9.5 million bank loan. During 2014, representatives from Ginsberg Foods and CEDC met with the planning and zoning boards for the Towns of Ghent and Claverack to address environmental and zoning issues, and received approval for all required variances by September 2014. However, on November 10, 2014 the Town of Ghent Planning Board failed to approve the project plans. The project was unable to proceed and Ginsberg Foods is in the process of contesting the Planning Board's decision.

Results of Investigation of Complaint

Property Transaction

Complaint: The sale of the CEDC property to Ginsberg Foods for \$1 may be in violation of Section 2896 and 2897 of Public Authorities Law.

Section 2896 of Public Authorities Law pertains to duties of public authorities with respect to the disposal of property, while Section 2897 addresses the process by which a public authority is to dispose of its property. In general, Section 2897 stipulates that property may not be disposed of for less than fair market value, and that disposal shall be made through public advertising for bids.

However, Section 2897 (7)(ii) provides that property may be disposed of for less than fair market value and public advertising for bids is not required if the purpose of the sale is within the mission of the public authority. CEDC's mission is to encourage the location, expansion, and retention of prospective and existing businesses in Columbia County, and the purpose of transferring the property to Ginsberg Foods was to enable the expansion of Ginsberg Foods' operations and the creation of jobs.

Additionally Section 2897 requires that if property is sold for less than fair market value the public authority is to provide an explanatory statement to the State that includes a description of the property, the appraised fair market value of the property, the purpose of the sale (including the benefit to the public resulting from such sale, such as jobs to be created or retained), the value to be received, the names of the parties involved in the sale, and information on any other offers on the property. CEDC met this requirement by submitting its explanatory statement for the disposal of the property to DNJ Properties, LLC to the ABO on August 19, 2014.

Conclusion: The ABO found that the proposed transfer of the property to Ginsberg Foods for less than fair market value and without public advertising was consistent with the intent of Section 2897.

Conflicts of Interest

Complaint: Several CEDC board members were active participants in the proposed property sale to Ginsberg Foods and decisions to provide financial assistance, despite the appearance of real or perceived conflicts of interest.

In general, public authority board members and employees should strive to avoid a conflict, or the appearance of a potential conflict of interest. However, when the appearance of a potential conflict of interest does arise, the affected board member is expected to disclose the potential conflict so that the board may determine if the individual should be recused from all relevant discussions or abstain from any votes on the matter. CEDC's Code of Ethics goes beyond that and states that no CEDC

officer, board member or employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties. If there is a financial interest, direct or indirect, of \$10,000 or more in a CEDC project, the individual is to file a written statement with the CEDC of such interest, and the statement is to be open to public inspection.

We reviewed CEDC's board and Executive Committee meeting minutes as well as email correspondence from January 2012 through December 2014 to determine whether CEDC board members had an interest in the project and if they were involved in discussions related to the project. A timeline of significant dates for the Ginsberg Foods project and the involvement of those CEDC board members with potential conflicts of interest is attached as Appendix II.

We identified four current or former members of the CEDC board as having potential conflicts of interests concerning the property transaction between CEDC and Ginsberg Foods.

David Ginsberg: David Ginsberg is the Chief Executive Officer (CEO) of Ginsberg Foods, and was a CEDC Board member and Executive Committee member until October 2013 when he resigned from the board. Mr. Ginsberg did not submit a written statement to the board disclosing his financial interest in the project. A review of meeting minutes show that Mr. Ginsberg was present at one Executive Committee meeting (June 11, 2013) where the project was discussed prior to his resignation. During that meeting Mr. Ginsberg recused himself; however the minutes do not indicate the reason for this recusal. CEDC's emails show that while David Ginsberg was a board member he did not participate in public discussions of the project, other than being copied on certain correspondence. Ginsberg Foods Vice President of Operations was the main point of contact, specifically in regards to financial assistance negotiations and planning of its expansion project.

David Crawford: David Crawford is the CEDC President and a member of the Executive Committee. He is also the owner of Crawford & Associates, the firm contracted by Ginsberg Foods to provide engineering services on the project.

Mr. Crawford did not submit a written statement to the board disclosing his financial interest in the project. A review of meeting minutes show that Mr. Crawford was present at 18 of the 23 board and Executive Committee meetings at which the Ginsberg Foods project was discussed. However, there is no record in the minutes of Mr. Crawford disclosing his financial interest in the project. According to the minutes, Mr. Crawford did recuse himself from voting on the contract to sell CEDC's property to Ginsberg Foods at the July 29, 2014 board meeting. However, the minutes do not indicate the reason for this recusal.

We interviewed each of the members of the Executive Committee, and certain members generally stated that during meetings Mr. Crawford verbally disclosed that

his firm was the engineer for the project and that he did not significantly participate in discussions. Some members indicated that he would sometimes leave the room as well. However, his disclosures were never recorded in meeting minutes. It is the board's duty to make sure the minutes accurately reflect all actions taken by board members during meetings. Members indicated that they do not always thoroughly review the meeting minutes for accuracy, but would do so moving forward, specifically in regards to conflicts of interest.

Although members indicated that Mr. Crawford verbally disclosed his interests in the Ginsberg Foods project and did not partake in discussions, we found instances in meeting minutes where Mr. Crawford did participate in discussions and voted on issues related to the project. For example, on November 26, 2013 Mr. Crawford voted to enter into an agreement with Columbia County for a State grant to Ginsberg Foods. In a January 14, 2014 Executive Committee meeting, Mr. Crawford participated in discussions related to the project. During this meeting, Mr. Crawford stated that he had been in contact with Ginsberg Foods on the project and later suggested that the Executive Director ask another CEDC board member, William Better, to be the project manager for the Ginsberg Foods project. Additionally, in the July 8, 2014 Executive Committee meeting, Mr. Crawford participated in discussions related to establishing the recapture terms of the land sale contract between CEDC and Ginsberg Foods.

Finally, we found that Mr. Crawford was a party to various emails in which the project was discussed. These emails indicate he participated in meetings on the project and he is copied on emails sent between CEDC staff and Ginsberg Foods. Additionally, in other instances he appears to have a more active role. For example, on October 13, 2013 Ginsberg Foods' Vice President sent an email to the CEDC Executive Director requesting CEDC to facilitate tax increment financing (TIF) for infrastructure costs of the project. The Executive Director responded that there are questions concerning the constitutionality of a TIF and to eliminate the uncertainty of TIF financing he secured a \$500,000 grant from the State to help with the infrastructure costs. Mr. Crawford, who was copied on both emails, requested the Executive Director to set up a meeting with CEDC attorneys and Ginsberg Foods and that he would encourage the company to have the meeting. Further, on September 22, 2014 Mr. Crawford sent an email to two members of CEDC's board, CEDC's Executive Director and the Vice President of Crawford & Associates, stating that David Ginsberg has finally agreed that some professional help is needed with this project and that there will be a meeting the following day at the offices of Ginsberg Foods with representatives from a public relations firm (Behan Communications).

Robert Sherwood: Robert Sherwood is the Treasurer of CEDC and a member of the Executive Committee. He is also the current President and former CEO of Kinderhook Bank (in October 2013 he relinquished responsibility for day-to-day operations). In April 2014 Kinderhook Bank provided Ginsberg Foods with two loans totaling \$9.5 million for its proposed expansion project. The CEDC property was the collateral for the loans.

Mr. Sherwood did not submit a written statement to the board disclosing his financial interest in the project. A review of meeting minutes since April 2014 show that Mr. Sherwood was present at seven of the twelve board and Executive Committee meetings when the Ginsberg Foods project was discussed. However, there is no record of Mr. Sherwood disclosing his interest in the project during these meetings. Of more concern, Mr. Sherwood voted to sell CEDC's property to Ginsberg Foods. In our interview, Mr. Sherwood acknowledged he did not act as a board member who had a potential conflict of interest. He stated that in retrospect he should have recused himself from the vote.

William Better: William Better, Esq. has been a member of the CEDC board since 2010. Mr. Better is owner of William J. Better, P.C., a law firm in Kinderhook, New York. During 2014, the CCIDA paid Mr. Better \$22,375. We were told that these payments were for Mr. Better to negotiate the CCIDA's financial assistance package with Ginsberg Foods. Mr. Better did not submit a written statement to the CEDC board disclosing his interest in the project. Mr. Better was present at four of the nine board meetings during 2014 when the project was discussed. However, there is no record in meeting minutes disclosing Mr. Better's involvement in the project. According to the October 9, 2014 board meeting minutes, Mr. Better indicated that he had not participated in discussions on the Ginsberg Foods project; however the minutes do not state the reason for his lack of involvement in discussion.

Actions of Other Board Members: During our interviews with CEDC Executive Committee members, most indicated that it is not uncommon for one or more board members to have potential conflicts of interest regarding particular projects or loans; however the members stated they are generally aware of these circumstances and do not think it is necessary to always disclose potential conflicts. None of the Executive Committee members were aware of the requirement in the CEDC Code of Ethics for a written statement disclosing a member's financial interest in a project. Members also indicated that they did not feel influenced by any of the members with interests in the Ginsberg Foods project. Rather, each indicated that they independently concluded that the project would be beneficial to the County and wanted to ensure that the project moved forward.

Conclusion: Board members demonstrated a lack of awareness of their adopted policies concerning the disclosure of potential conflicts of interest. CEDC board members who had financial interests related to the Ginsberg Foods project did not file a written statement with the board disclosing their interest in the project. Further, other than the instances noted above, none of the members other than David Ginsberg, recused themselves from all discussions related to the project in the board or Executive Committee meetings they attended. In the instances when board members recused, the reason for such recusal was not identified.

While no board member acknowledged that the potential conflicts of interest of certain directors influenced their decision concerning the project, it is troubling that this lack of disclosure is considered routine with other projects and loans. This lack of

disclosure and transparency inhibits the public's trust and confidence concerning board actions. To avoid complaints such as this in the future, the CEDC board should ensure that all potential conflicts of interest are properly disclosed and addressed in compliance with state law and its own approved policies.

No harm has yet arisen from the board's failure to follow its own policies since the Ginsberg Foods expansion project was not approved by the Ghent Planning Board. This may not always be the case with future projects.

Unauthorized Service Contracts

Complaint: Mr. Crawford, as CEDC President, improperly advocated that CEDC enter into a contract with a public relations firm to generate public support for the Ginsberg Foods project.

According to CEDC's May 27, 2014 board minutes, Mr. Crawford explained that he and the CCIDA Chair met with Ginsberg Foods representatives at the start of the project to encourage the company to hire a public relations firm to get accurate information out to the public and address any potential opposition. However, Ginsberg Foods decided to mount its own public relations campaign. Mr. Crawford then encouraged the CEDC board to hire Behan Communications (Behan) to promote the CEDC's mission and support for this project. He indicated that he had worked with the firm before and suggested a budget of \$5,000 to \$10,000. The following is a timeline of events relative to this contract:

May 27, 2014: Board authorized the CEDC Executive Director to solicit a proposal from Behan, not to exceed \$10,000

May 28, 2014: Email records indicate that the CEDC Executive Director reached out to Behan stating that the Board authorized him to engage its services. Behan agreed to help and offered a time to meet. The next day the Executive Director emailed David Crawford and asked when he wanted to meet with Behan. Mr. Crawford later stated that the first week of June would be a good time to meet.

June 9, 2014: CEDC Executive Director entered into a contract with Behan to provide professional communication services not to exceed \$10,000 effective June 15, 2014 through July 31, 2014. However, Behan billed CEDC for services beginning June 5, 2014.

June 24, 2014: The CEDC Executive Director informed the board that he had begun working with Behan. The board meeting minutes indicate that certain CEDC board members expressed confusion that they had not approved the contract, rather only directed the Executive Director to obtain a proposal for services. The minutes indicate that the Executive Director stated that he had been asked to execute the proposal and the CEDC President stated that the contract had already been signed.

July 23, 2014: The last date Behan billed the CEDC for services per invoices.

August 26, 2014: Behan made a presentation to the CEDC board on the public relations services it provides and made recommendations to the board on its marketing of projects. The board then approved an extension to the contract; however no other services were billed by Behan.

There is no indication that the contract with Behan Communications was approved by the CEDC board. However, CEDC procurement policy does not stipulate that board approval of contracts is required. And, while CEDC's procurement policy requires that competitive selection procedures be followed, the policy exempts professional services contracts from this requirement.

Conclusion: There is evidence that the CEDC President advocated for the selection of Behan Communications. The total amount CEDC paid Behan for its services was \$3,477.

Other Favorable Financial Assistance

Complaint: A loan provided by CEDC to Ginsberg Foods in 2005 is evidence CEDC board members often granted the company favorable treatment.

In February 2005, CEDC provided Ginsberg Foods with a \$400,000 loan at an interest rate of one percent for ten years. The majority of the funding for this was loan came from Community Block Development Grant (CDBG) funds. CEDC was not able to provide us with the loan criteria it used to award this loan, nearly ten years ago. However, CEDC's current lending policy for its CDBG funded loan program stipulates a maximum loan amount of \$100,000, a maximum loan term of 15 years, and an interest rate based on the client's needs, ability to repay, and job creation projections. This policy also allows for exceptions to the policy based on recommendations by the loan committee and approved by the board.

As of December 31, 2013, CEDC had 24 loans outstanding from the CDBG loan fund. Six of these loans exceed the \$100,000 maximum loan amount. Further, the loan to Ginsberg Foods has the second lowest interest rate at 1 percent (the lowest interest rate is zero percent on a \$200,000 loan). However, the Ginsberg Foods loan is one of only four loans that were intended to create jobs.

Conclusion: Although the Ginsberg Foods loan terms are more favorable than the majority of the other loans, it appears to comply with CEDC's lending policy.

Other Issues Identified

Section 102(2) of Public Officers Law requires public bodies to provide advance public notice of meetings, allow for public access to meetings, and formally document and record meeting minutes. Committees and subcommittees established by public bodies are also subject to Open Meetings Law. CEDC has established two committees, its Executive Committee and a Loan Committee that reviews loans recommended by CEDC staff and determines if such loans will be recommended for board approval. However, CEDC does not provide public notice of these committee meetings or allow public access to these meetings. The CEDC does not maintain meeting minutes for its Loan Committee. CEDC also did not maintain meeting minutes for all of its Executive Committee meetings in 2014. Of the nine meetings held, minutes were taken only for six of those meetings, and none of these meeting minutes are posted on the CEDC website.

Public Officers Law Section 105 identifies specific exceptions that are not subject to open meetings, and may be discussed in executive session. These exceptions include discussion of the sale or lease of real property only when the publicity of such would substantially affect the value of the property. We found CEDC went into executive session at its July 29, 2014 board meeting to discuss the property transaction with Ginsberg Foods. This use of executive session does not appear to be appropriate, since the property was being transferred to Ginsberg Foods for \$1, and public disclosure of the transaction would not appear to substantially affect this value. CEDC officials responded that the proposed transfer to Ginsberg Foods included a Penalty Note and Mortgage which required Ginsberg to pay up to \$280,000 if certain performance benchmarks were not met. Such benchmarks included construction and operation by Ginsberg of a minimum of 60,000 square feet of structure on the property within three years from the Note, and the construction of the remaining 140,000 square feet of building(s) on the property within 10 years. While CEDC's response indicates that the executive session discussion was tied to the value of the property transaction, it fails to demonstrate how public disclosure of this discussion would substantially affect the value.

CCIDA Contract

As indicated, CEDC board member William Better was paid \$22,375 by CCIDA. We were told that these payments were for Mr. Better to negotiate CCIDA's financial assistance package with Ginsberg Foods. We find the payments to Mr. Better by the CCIDA to be a questionable use of CCIDA funds. There is no indication why the services could not be provided by the CCIDA, either by the executive director or either of the two existing legal counsels contracted by the CCIDA. There is no written contract between the CCIDA and Mr. Better, or any records to indicate what services were to be rendered or the fees to be charged. Further, a review of the invoices to the CCIDA show he was paid for calls and meetings with individuals that do not appear to be related to CCIDA's financial assistance package. For example, there are charges for phone calls to Crawford & Associates including to David Crawford.

When we met with Mr. Crawford he stated that these communications were in regards to planning the Ginsberg Foods expansion and not related to the CCIDA's financial assistance. Such discussions appear to be related to the CEDC's involvement in the project and not the CCIDA.

GhentCANN

—— 66 Old Mill Rd • Ghent NY 12075 ——

October 15, 2014

To: David Kidera, Director
State of New York Authorities Budget Office
P.O. Box 2076
Albany NY 12220-0076

Jihoon Kim, Intergovernmental Affairs
Office of the NYS Attorney General
Poughkeepsie Regional Office
One Civic Center Plaza, Suite 401
Poughkeepsie NY 12601
Jihoon.Kim@ag.ny.gov

Cathy Calhoun, Deputy Comptroller
Division of Intergovernmental & Community Affairs
Office of the State Comptroller
110 State Street, 15th Floor
Albany NY 12236
ccalhoun@osc.state.ny.us

Dear Director Kidera, Deputy Comptroller Calhoun, and Mr. Kim:

GhentCANN is an unincorporated association of citizens, taxpayers, property owners, voters, and other residents of Columbia County. Our organization formed several years ago to fight nuisance noise in the Town of Ghent, and to push for enforcement of zoning laws.

Our members and supporters regularly attend public meetings regarding development projects, and have participated both actively and responsibly in various land use planning reviews and enforcement actions in the area.

COMPLAINT

We are writing today regarding a 90-day notice regarding the disposal of real property, pursuant to the Public Authority Accountability Act of 2005, which was submitted August 22, 2014, by Kenneth J. Flood, Executive Director of the Columbia Economic Development Corporation (CEDC). CEDC is a local public authority.

The notice referenced above indicates plans to sell 33.006 acres of land located in the towns of Ghent and Claverack (NY) to DNJ Properties, LLC, for \$1. The guarantor and apparent beneficiary of this transaction is Ginsberg's Institutional Foods, Inc.

The purpose of this letter is to comment upon, and initiate a complaint regarding, this \$1 land transaction. Based on our research and observations of meetings, we believe that this sale may be in violation of New York PBA Law New York PBA Law §2896 and §2897, for example part (3) of the latter, which provides that public authorities

may dispose of property for not less than the fair market value of such property by sale, exchange, or transfer, for cash, credit, or other property ...

Other compliance concerns also exist, for example regarding part (6) of §2897, which sets forth rules for Bids for Disposal. To our knowledge, no open bidding occurred for this land.

We have reviewed all publicly-available CEDC Board minutes from 2012-2014, as well as other materials, and are prepared to report upon these in additional detail. It is our intention to submit a more extensive report on the matters described below, and respectfully request a request to present our findings in person to your agencies.

I. POTENTIAL CONFLICTS OF INTEREST

Our principle, immediate concern is that the transaction involves several potential conflicts of interest or appearances of such involving the recipient and members of the Board of CEDC, as follows:

A. Dual Role of David Ginsberg

The first page of CEDC's notice¹ states:

For the past several years, CEDC has been in discussions with Ginsberg's Institutional Foods, Inc. ("Ginsberg's") regarding the potential conveyance of the subject premises ...

Ginsberg's CEO David Ginsberg was a longtime member of (and past President of) the Board of CEDC. As clearly indicated by CEDC's Board minutes, Mr. Ginsberg stepped down from that Board in early October 2013. However, as acknowledged by the agency itself above, "discussions" of this conveyance began prior to that date.

Indeed, the CEDC Board's discussion of the agency supporting Ginsberg's project began while Mr. Ginsberg himself was still a highly-influential member of that Board. In addition to the above, CEDC minutes, media reports, Ginsberg's submissions to various permitting agencies, and other sources likewise indicate that advancement of the Ginsberg's

¹ www.abo.ny.gov/property/ColumbiaEDC_8.19.2014.pdf

project began while Mr. Ginsberg was still a Board member of CEDC. Mr. Ginsberg's resignation occurred shortly before the agency secured a \$1.5 million package of incentives for Ginsberg's from New York State.

B. David Ginsberg & Ken Flood

In his previous role as President of CEDC, it is our understanding that David Ginsberg was a member of the three-person panel which ultimately selected Kenneth J. (Ken) Flood to become the Executive Director of CEDC, as well as of the Columbia County Industrial Development Agency (IDA) and Commissioner of Columbia County Planning/Development. It is our further understanding from a source familiar with the process that Mr. Ginsberg was responsible for interviewing some or all of the candidates.

Mr. Flood submitted the current notice for a \$1 sale of 33 acres to benefit Ginsberg's expansion project. He also has been instrumental in advancing a far larger package of benefits for Ginsberg's, such as a successful application for \$1.5 million in tax benefits and grants from New York State, and a proposal for a PILOT plan currently before the County IDA, which reportedly would save the company some \$665,000 in property taxes.²

As such, an appearance has been created that Mr. Flood may be proposing and promoting publicly-financed deals and benefits for a company headed by a person who was responsible for his hiring to at least one and possibly three of his publicly-funded positions.

C. David Ginsberg & David Crawford

The current President of CEDC is David Crawford, the CEO of Crawford & Associates Engineering & Land Surveying, P.C. Mr. Crawford's firm³ is also handling the engineering work and environmental permitting for the Ginsberg's expansion project, appearing at multiple hearings and preparing extensive materials on their behalf.

While it has been claimed by Mr. Flood, *et al.*, that Mr. Crawford has recused himself from all debates and votes on the Ginsberg's expansion, the minutes of CEDC suggest this may not have always been the case. (At best, it would appear that Mr. Crawford's role as President of CEDC may be exerting a tacit influence on other Board members to support the Ginsberg's project, including this \$1 land sale.)

CEDC's November 2013 minutes⁴ indicate that Mr. Crawford was in attendance when a motion was made "to approve entering in the agreement" with Columbia County to pass \$516,000 of Small Cities funding through to Ginsberg's. The motion "passed

www.registerstar.com/news/article_407cb352-4468-11e4-9fce-9fb458d90002.html

³ www.crawfordandassociates.com

⁴ www.columbiaedc.com/wp-content/uploads/2012/04/CEDC-Minutes-11-26-13.pdf

unanimously,” according to those minutes. No mention is made of Mr. Crawford removing himself from the discussion or abstaining from the vote.

Mr. Crawford also advocated strongly that CEDC hire a public relations firm for \$10,000, which would assist with promoting the Ginsberg’s project. The agency’s May 2014 minutes report that:

Mr. Crawford stated that he and Mr. Bohnsack had met with Ginsbergs at the beginning of their project to encourage them to hire a public relations firm [to] head off any issues. He stated Ginsbergs had stated they would do their public relations in house. Mr. Crawford stated he was now encouraging CEDC to hire a public relations firm to get CEDC’s mission out to the public... He stated this should include the message about Ginsberg’s... Several board members cautioned against using the public relations company for only Ginsberg’s, noting it should be iused for the advancement of CEDC. Mr. Crawford asked for a motion to obtain a proposal from Behan Communications not to exceed \$10,000.

However, either Mr. Crawford or Mr. Flood or both went ahead after this meeting with signing a contract with Behan Communications,⁵ though the CEDC Board had not yet authorized them to proceed with more than obtaining a public relations proposal.

As with other items above, we have reviewed all publicly-available CEDC Board minutes from 2012-2014, and are prepared to report upon these in detail in a future comment and/or meeting with your offices.

D. Refusal To Deny Conflict of Interest

A former Columbia County Board of Supervisors Chair and current Town of Hillsdale Supervisor recently made a written request that CEDC affirm that the \$1 sale to Ginsberg’s is aboveboard. As reported by *The Register-Star* on August 26, 2014:

Supervisor Art Baer, NOP-Hillsdale, said he wants Ginsberg’s [sic: CEDC’s] lawyer, Andy Howard, to draft a letter stating Howard looked at the deal and there is no issue with accepting it. “The members of the CEDC board are all related to Ginsberg’s — not as family, they all do business together,” Baer said. “I want to make sure there is no conflict of interest there in proposing these deals with Ginsberg’s because of it... I would feel more comfortable with a letter stating as much so it doesn’t fall on us to produce such a letter at a later date.”

However, after apparently consultating with the CEDC’s Executive Committee, the agency’s attorney declined to issue a legal opinion denying the existence of any conflict of interest in this transaction.

⁵ Mr. Crawford’s firm shares another client in common with Behan Communications, the PCB processor TCI of NY. TCI recently left the Town of Ghent after its facility exploded in the summer of 2012. Another CEDC Board Member, William (Bill) Better, represented TCI as an attorney.

Moreover, the agency's own minutes note that Mr. Crawford participated in a discussion of this request from Supervisor Baer, even as his engineering firm, per above, has been performing significant work for the Ginsberg's project:

Supervisor [Baer] had not backed down from his request for a formal legal opinion about the land transaction as well as a statement stating there was no conflict of interest by any Board member. Mr. Crawford stated this was all due to politics.

II. QUESTIONS ABOUT FAIRNESS OF PRICE

Key public officials, GhentCANN members, private citizens, independent news sites, and the editorial boards of Columbia County publications such as *The Register-Star* and *Columbia Paper* have each raised objections to the proposed \$1 price tag for this 33-acre property. The property has been appraised at approximately \$280,000, and was purchased for nearly \$110,000. Yet CEDC proposes to sell it for \$1 to Ginsberg's.

County Real Property records show that CEDC acquired the property in 1997 for \$109,950. However, several Board members who voted for the \$1 sale have since indicated that they were unaware that CEDC had paid for the land. Published reports wrongly stated instead that it had been "inherited," an error which the agency does not appear to have tried to correct despite that term appearing as many as six times in *The Register-Star*.

Columbia County Board of Supervisors Chair Patrick (Pat) Grattan has recently asked CEDC to require Ginsberg's to pay the original \$109,950 price, plus any mortgage or other incidental costs. Columbia County is the principle funder of CEDC's staffing, overhead and activities.⁶

We further note that the \$1 price for 33 acres is far lower than another recent decision to dispose of a second, much smaller piece of CEDC-owned land. According to the May 2014 minutes of the agency, its Board approved a motion to sell 5.8 acres of land—2 acres of it wetlands—for \$50,000 to Tierra Farms, with a 5-year mortgage at 10% interest. Such terms appear far less favorable than those proposed to Ginsberg's, even though the Ginsberg parcel is nearly six times larger. This further deepens the appearance of a special deal for a former CEDC Board member's company.

CEDC officials have attempted to justify the \$1 price by saying that it has tried but failed to market the 33 acres for nearly two decades. However, there is little evidence that more than token efforts to market the property were undertaken. To our knowledge as full-time residents who have often driven past this property located on a major County road, it never appears to have had a For Sale sign, or been listed in the many published real estate

⁶ *In response to widespread public and media concerns, Mr. Grattan has also set up a panel to review the performance of CEDC and the IDA.*

guides for the area. The notice of availability⁷ for sale is difficult to find on CEDC's website, and states that the "price is negotiable dependent upon anticipated job creation." It would appear that the price for 33 acres for Ginsberg's was extremely negotiable indeed. Tierra Farms, by contrast, was offered a \$50,000 price for less than 6 acres, at 10% interest, despite promising to create 24 jobs.

We note also in this context that Ginsberg's is nearing the end of a 15-year PILOT plan from the IDA, as well as a \$400,000 loan from CEDC. The latter was issued in 2005 from funds originating with a Community Development Block Grant (CDBG) program. The loan terms, according to a chart published by the agency, appear to be 1% interest. As reported by investigative journalist Sam Pratt,⁸

Ginsberg's 1% interest rate also stands out as the lowest paid by any of the 50 current loanees listed on the chart, dated 30 September 2014. By contrast, more than half of the other loan recipients are paying between 7% and 8.5% interest. Only 5 of the 50 recipients pay less than 5% interest, with none paying less than 2% other than Ginsberg's. ... Moreover, half of CEDC's other current loans are for \$25,000 or less. The next largest loan after the \$400,000 for Ginsberg's is \$284,000 to a Livingston dairy operation. The third largest is \$150,000 to a food business in Ancramdale. Those businesses are paying 5% and 6% interest, respectively. The 10-year term of the Ginsberg's loan is also tied for second longest on the table. One other distribution business has a 15-year loan for \$100,000. Three other businesses have a 10-year loan. More than three-quarters of the loanees have terms of 6 years or less. The loan was initiated in 2005, and appears to partially overlap with the tenure of David Ginsberg as President of CEDC.

III. ISSUES WITH ABO COMPLIANCE

The CEDC is a public authority and subject to Section 1411 of the Not for Profit Corporation Law. In its May 2012 minutes, CEDC announced that it had agreed to come into compliance with the ABO from 2012 forward.

CEDC minutes posted after this announcement indicate that agency staff have had difficulty getting Board members to complete required forms, such as financial disclosures, and to attend required ABO trainings. The Board's May 2014 minutes note that "it has been nearly 2 years since CEDC had come under the NYS Authority Budget Office's regulations [but] there were still several board members who had not completed training." The minutes warn that if this is not corrected, "the Board will be cited." Even as recently as August 2014, the Board's minutes indicate that "there were about 3-4 Board members who would be receiving letters about complying with the ABO requirements."

⁷ www.columbiaedc.com/?p=1100

⁸ www.sampratt.com/sam/2014/10/ginsbergs-also-got-400000-loan-from-cedc.html

As a further indication of the “culture” of this agency, its August 2013 minutes⁹ include this discussion of the adoption of a Code of Ethics for CEDC:

The Board expressed dissatisfaction with the inability to loan to a company due to the fact that the owner was a Board Member.

CEDC’s August 2014 minutes quote Mr. Flood discussing a County Supervisors request (noted above in this letter) for “a formal legal opinion... stating there was no conflict of interest by any Board Member.” Mr. Flood is quoted as saying that “it is all coming from Albany and the ABO.”

The authority’s 2013 Audited Financials referred to “noncompliance with laws and regulations, identifying six ABO requirements which CEDC “had not fully implemented.”¹⁰

The September 2013 minutes also report that the ABO had requested a meeting with CEDC and “visited the office twice and were asking for clarification and further information... focused on deposits and expenses.” According to a 2013 ABO compliance audit¹¹ posted on the agency’s website, CEDC spends some of its budget “on activities that do not directly contribute to CEDC’s mission.”

We have additional concerns that meetings and “retreats” held by CEDC’s five-member Executive Committee, to which the full board often delegates key decisions, are not being publicly-noticed, and minutes are not being kept. In general, the Board does not appear to be up-to-date on Open Meetings Law.

IV. CONCLUSION: REQUEST FOR MEETING

The issues raised above are merely a sketch of concerns which we have been diligently researching for some time. We respectfully request an opportunity during this 90-day period to present a fuller set of findings to your offices, including copies of any and all supporting documents.

In general, we believe that many of the issues raised above are widespread throughout the agency’s activities, and should lead to a deeper look into its overall operations. For example, even a cursory review of CEDC Board minutes from the past several years turns up numerous instances of potential conflicts of interest.

⁹ www.columbiaedc.com/wp-content/uploads/2012/04/CEDC-Minutes-8-27-2013.pdf

¹⁰ www.columbiaedc.com/wp-content/uploads/2012/04/2013-CEDC-Audited-Financials.pdf

¹¹ www.abo.ny.gov/reports/compliancereviews/columbiaeconomicdevelopmentcorporationreviewreport2013.pdf

As such, the review of this particular disposal request may have farther-reaching implications for ensuring agency compliance with ABO requirements.

We look forward to hearing from you on how to proceed with this complaint and the remainder of our comments.

Sincerely,

Patti Matheney Schrom
GhentCANN
patti@schrom.com
(518) 828-1481

June 30, 2011: Email from Ginsberg Foods to CEDC's Executive Director indicating preliminary interest in CEDC property.

January 10, 2012: CEDC Executive Committee meeting. Executive Director notes that Ginsberg Foods is committed to staying in the County; however they have an issue with the shape of the parcel and that Ginsberg Foods would be shown other property in the County.

December 6, 2012: Email from Ginsberg Foods to CEDC Executive Director indicating Ginsberg Foods is serious about the CEDC property and sets up a meeting with CEDC to discuss questions relating to the infrastructure improvements needed for the property.

February 12, 2013: The first financial assistance proposal for the Ginsberg project is drafted.

May 29, 2013: Email from Crawford & Associates' Vice President to Ginsberg Foods indicates Mr. Crawford's engineering firm begins providing engineering services for the Ginsberg Foods project.

June 11, 2013: CEDC Executive Committee meeting. Mr. Ginsberg recuses himself from discussion regarding his project expansion. Mr. Crawford attends this meeting but does not recuse himself.

October 23, 2013: Mr. Ginsberg officially resigns from the CEDC board and the Executive Committee.

November 12, 2013: CEDC Executive Committee meeting. CEDC plans to provide Ginsberg Foods the parcel at no expense. Mr. Crawford attends this meeting but does not recuse himself.

November 26, 2013: CEDC Board meeting. Board approves an agreement with Columbia County to obtain a State grant for the Ginsberg Foods project. Mr. Crawford attends this meeting and votes in favor.

January 14, 2014: CEDC Executive Committee meeting. Mr. Crawford participates in discussion related to the Ginsberg Foods project. Mr. Crawford states that he wants Mr. Better to be project manager of Ginsberg Foods project.

March 24, 2014: Mr. Better first charges the CCIDA for services related to the Ginsberg Foods project.

April 1, 2014: Ginsberg Foods signs an agreement with Kinderhook Bank for two loans totaling \$9.5 million for the costs associated with the construction of the new facility.

July 8, 2014: CEDC Executive Committee meeting. The structure of the Ginsberg Foods land contract is discussed. Mr. Crawford partakes in the discussion. Mr. Sherwood attends this meeting but does not recuse himself.

July 29, 2014: CEDC Board meeting. CEDC Board approves the contract of sale with Ginsberg Foods for CEDC property. Mr. Crawford excuses himself prior to the discussion and does not vote, but the reason for excusing himself is not recorded. Mr. Sherwood attends this meeting and votes to approve the transaction. Mr. Better did not attend this meeting.

October 9, 2014: CEDC Board meeting. Mr. Better asks that it be noted in meeting minutes he had not participated in discussions related to Ginsberg project and was present in the discussions to ensure a quorum was present for the meeting, but does not indicate the reason for not participating.

November 5, 2014: CCIDA Board meeting. Ginsberg Foods' financial assistance for property, sales and mortgage recording tax exemptions is approved.

November 10, 2014: Town of Ghent Planning Board meeting. Ginsberg Foods' site plans are denied.