

ULSTER COUNTY OFFICE OF THE COMPTROLLER

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Comptroller



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ULSTER COUNTY COMPTROLLER MARCH GALLAGHER'S COMMENTS ON TRANSPARENCY AND ACCOUNTABILITY AT THE ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE

April 19, 2024

The Ulster County Comptroller's Office provides enhanced oversight of the Ulster County Economic Development Alliance (UCEDA) on behalf of taxpayers because of the importance of its work. Over the last four years UCEDA has been responsible for disposal of the largest asset in Ulster County history, the former IBM property, valued at \$18 million, and for the distribution of approximately \$2 million in pandemic related business grant funding through the CARES grant programs.

Yet, UCEDA has often struggled with transparency and accountability. In order to communicate potential internal controls and process improvements, the Comptroller's Office has audited the business grant programs, maintained detailed records on the transactions for the sale of the former IBM properties, reviewed all public materials, attended UCEDA meetings, offered comment to the Board of Directors at their meetings and informed legislative and executive leaders in meetings and memos (attached). County Legislators have served and continue to serve on the Board. And yet, the problems persist.

In addition to the findings associated with both the CARES I and CARES II business grant audits, the Comptroller's Office has commented in Board meetings and to staff on the following topics:

- Lack of notice for Board meetings
- Board materials not made public
- Lagging and incorrect financial reporting
- Presentation of duplicate claims for payment for Blueprint
- Failure to market or seek bids on the former IBM property
- Failure to disclose the terms of the sale of the former IBM property prior to Board vote
- Lack of transparency on the costs to taxpayers associated with maintenance of the former IBM property
- Lack of segregation and accounting of funds for UCEDA funds including the imprest escrow account for transaction costs to sell the former IBM property
- Lack of documentation for the environmental remediation credit for iPark
- Improper tax treatment of income
- Delayed annual audit

At its last meeting the UCEDA Board chose to eliminate the public comment period at the beginning of their board meetings preferring to receive all comments in writing. The UCEDA website now states: “[t]hose wishing to comment on agenda items, request to be added to the agenda, or sign up for public comment may do so via email . . .”

What is the reason for requiring this change to the acceptance of public comment? And what will the result of this change be?

The Comptroller’s Office has attended 97%, or 38 of the last 39 meetings of the UCEDA Board and commented at 38%, or 15 of those 39 meetings (see attached comments timeline). Other members of the public have commented *only twice* in the last 39 meetings.

UCEDA has struggled to make Board materials available in a timely way, making advance review of materials impossible. Release of materials on a Thursday afternoon, for a Monday meeting, as we have in this case of UCEDA’s next meeting on April 22nd, leaves exactly one business day to review, prepare written comment, and email a request to speak on an agenda item such as the 75 pages of leases and subleases for the Workforce Innovation Center at iPark. This is simply not reasonable.

While challenges in transparency, adequate procedures, and record-keeping have been blamed on staff, it is the Board of Directors that is charged with governance. Over the last 4 years, the Board has not provided the oversight and direction necessary for an organization of this importance. Consequently, taxpayer funds for business support were squandered and Ulster County taxpayers have little recourse should the redevelopment of iPark not happen.

The UCEDA Board has chosen to meet these internal controls and procedural challenges by barring public comment at the beginning of the meetings which will silence the voice of the Comptroller’s Office.

UCEDA requests comments going forward in writing. Here they are. I object to UCEDA’s lack of transparency and accountability on behalf of Ulster County taxpayers.

Public Comment at UCEDA Meetings
Excerpts of the Comptroller's Comments

7-27-21 Comptroller Gallagher attended

Executive Session

Discussion: The lease of sale or property was to be discussed, and the Board wanted to move to executive session. March Gallagher stated she was not happy and that she would like UCEDA's agenda's online prior to the meeting.

8-10-21 Deputy Comptroller DeMarco present, no comment

8-31-21 Comptroller Gallagher present, no comment

9-21-21 Comptroller Gallagher attended

Enterprise West

Discussion: Tim Weidemann provided updates regarding reopening the RFEI for the property with a special interest in seeking property developers and will engage the Enterprise West committee to review re-submissions.

March Gallagher requested the floor. Sarah Haley recognized at 4:48pm.

The next Enterprise West Committee meeting will be Thursday, September 23.

9-28-21 Comptroller and Deputy Comptroller present

PUBLIC COMMENT

March Gallagher asked for the privilege of the floor at 4:58pm. Sarah Haley granted at 4:58pm.

March asked if the Enterprise West Committee will be reviewing the RFEI submissions at their next meeting. Tim Weidemann confirmed that the Enterprise West Committee will review RFEI submissions and provide recommendations to UCEDA at a later date.

10-12-21 Deputy Comptroller present, no comment

11-9-21 Comptroller present, no comment

12-14-21 Comptroller and Deputy Comptroller present

PUBLIC COMMENT

March Gallagher said she does not know what is in the Harris Beach retainer agreement but expressed concern about environmental liabilities and asked whether the County would be getting money up front for liability. She stated the property would need an appraisal and an explanation, by the County, of why they are disposing it, as well as a description of the transfer and its public benefit in order to be in compliance with public authority law. She reminded the Board that the County is liable for any properties they have been in ownership of.

12-21-21 Comptroller and Deputy Comptroller present

Discussion: Sarah Haley requested that the UCEDA board go to executive session for the purposes of discussing a potential sale of real estate. An invitation was extended to UCEDA staff and legal counsel to join executive session.

Motion: Herb Litts made a motion, seconded by Brian Cahill, to enter executive session for the purposes of discussing a potential sale of real property.

Discussion: Comptroller Gallagher requested to be notified when the board concluded executive session, and asked if there are documents related to items on the agenda and whether those could be shared.

PUBLIC COMMENT

Sarah Haley recognized Comptroller March Gallagher. Comptroller Gallagher expressed a difficult lack of transparency with regard to the Tech City transaction including the meeting time, the notice for the meeting, the lack of access to the documents being considered, including fair market value and purchase and sale agreement. Comptroller Gallagher noted that the order of items is very telling in doing the vote to hire an appraiser after the vote to approve the purchase and sale agreement. Comptroller Gallagher does not see milestones for investment beyond the \$100,000 financing commitment, bar for double dipping for taxpayer dollars for clean up, and what the full justification is for a sale below fair market value if that is the case.

1-11-22 Comptroller and Deputy Comptroller present

PUBLIC COMMENT

Sarah Haley recognized Comptroller March Gallagher. Comptroller Gallagher noted that it is clear in the purchase and sale agreement that iPark87 can, if they so choose, apply for federal funding as the site is designated a brownfield site.

Sarah Haley recognized Phil Erner, Ulster County Legislator. Phil Erner clarified that the CARES contracts were approved. Herb Litts clarified they were approved contingently. Phil Erner then offered his contingent congratulations to the new awardees.

2-8-22 Deputy Comptroller DeMarco present

PUBLIC COMMENT ON AGENDA ITEMS

Discussion: Alicia DeMarco asked for an update regarding a previous BluePrint invoice. Sarah Haley noted that we can discuss it during the officer's report.

3-8-22; Deputy Comptroller DeMarco present, no comment

3-30-22; Deputy Comptroller present, no comment

4-12-22 Comptroller and Deputy Comptroller present

PUBLIC COMMENT ON AGENDA ITEMS

Discussion: Chair Haley recognized Comptroller Gallagher. Comptroller Gallagher stated that she can not comment on materials that are not provided in the board packet.

PUBLIC COMMENT

Chair Sarah Haley acknowledged Comptroller March Gallagher. Comptroller Gallagher wanted to bring to the UCEDA board attention that she has advanced the idea to require disclosures from the UCEDA board.

5-10-22 Comptroller and Deputy Comptroller present, no comment

6-2-22 Comptroller and Deputy Comptroller present

PUBLIC COMMENT ON AGENDA ITEMS

Discussion: Chair Haley recognized Comptroller Gallagher. Comptroller Gallagher stated that she can not comment on materials that are not provided in the board packet.

PUBLIC COMMENT

Chair Haley recognized Comptroller Gallagher. Comptroller Gallagher stated that she has no idea what was just voted on and is not aware of the terms of the PSA agreement that passed.

6-17-22 the Comptroller's Office was not in attendance

7-12-22 Comptroller and Deputy Comptroller present, no comment

8-9-22 Comptroller present, no comment

9-22-22 Comptroller and Deputy Comptroller present, no comment

10-11-22 Comptroller present, no comment

11-1-22 Deputy Comptroller present, no comment

12-13-22 Deputy Comptroller present, no comment

2-14-23 Comptroller and Deputy present

PUBLIC COMMENT ON AGENDA ITEMS

Discussion: Dan Spangler thanked the Board for the opportunity to speak and wanted the opportunity to hear about potential new construction projects.

March Gallagher asked Tim Weidemann about the financials with respect to ARPA funding coming into the County, stated she will look over the applicants for the CARES II Grant and review submitted applications for the CARES I Grant.

3-16-23 Comptroller present

PUBLIC COMMENT ON AGENDA ITEMS

Discussion: March Gallagher recommended UCEDA seeks an outside accounting person as CFO, citing Finance Department resignations. Ms. Gallagher will raise further questions during the Financials Discussions.

3-30-23 Comptroller present, no comment

4-4-23 Comptroller, Director of Internal Audit and Senior Auditor present

PUBLIC COMMENT ON AGENDA ITEMS

Discussion: March Gallagher commended the Audit Committee vote to delay approval of the 2022 Audit. Charles Dinstuhl spoke to the results of the Real Property Tax Audit and how those findings may reflect on UCEDA.

PUBLIC COMMENT

Henry Gage from Build Green Now addressed the Board to speak about his company.

4-11-23 Comptroller, Deputy, and DIAC present

PUBLIC COMMENT ON AGENDA ITEMS

Discussion: Sarah Haley granted Comptroller Gallagher the floor. Comptroller Gallagher explained she has recommendations regarding journal entries on the UCEDA financials and expressed concerns regarding the environmental costs to date at iPark87 with reference to the release of mortgage on the agenda. Comptroller Gallagher explained it's not clear to the Comptroller's office how claims regarding the environmental costs are validated. Comptroller Gallagher also requested to be informed about what parcels a mortgage will be held on.

PUBLIC COMMENT

Discussion: Sarah Haley granted Comptroller Gallagher the floor. Comptroller Gallagher encouraged UCEDA to ensure that bank accounts are FDIC insured. Additionally, Comptroller Gallagher observed that there hasn't been a motion of discussion regarding accounting services.

5-9-23 Comptroller attended, no comment

6-15-23 Comptroller and Deputy Comptroller attended, no comment

7-11-23 Comptroller and Director of Internal Audit attended

Sarah Haley recognized Comptroller March Gallagher. Comptroller Gallagher emphasized that her office is working as expeditiously as possible and they have determined that ARPA funds can be used to reimburse awardees, however, a new contract would be required. Comptroller Gallagher expressed concerns that the money could be perceived in a toxic way and urged everyone to be as careful as possible when discussing the program. Chair Sarah Haley asked that talking points be provided regarding the Cares II program and audit to the Board.

8-8-23 Senior Auditor attended, no comment

8-22-23 Deputy Comptroller and Director of Internal Audit attended, no comment

9-27-23 Deputy Comptroller and Director of Internal Audit attended

PUBLIC COMMENT

Discussion: Sarah Haley recognized Alicia DeMarco who inquired about any action against a Cares awardee who did not comply with grant requirements. Lindsay Chen clarified that the County Attorney's office will research possible actions before the next board meeting.

10-10-23 Comptroller and Director of Internal Audit attended, no comment

11-8-23 Comptroller and Director of Internal Audit attended, no comment

11-14-23 Director of Internal Audit attended, no comment

12-12-23 Deputy Comptroller attended, no comment

2-24-24 Comptroller and Director of Internal Audit attended

PUBLIC COMMENT

UC Comptroller, March Gallagher, informed members that their department has conducted an audit of the Cares 1 grant project. Feedback to follow.

3-18-24 Comptroller attended

PUBLIC COMMENT ON AGENDA ITEMS

Discussion: Comptroller, March Gallagher, stated that she had many comments on the upcoming agenda items. Stating that the structure of the meetings is a hinderance to providing information back to the Board. March Gallagher requested a link to the meeting recording be sent to her after the meeting.

Cares 1 Audit

Comptroller, March Gallagher, presented her findings of the audit of Cares 1 (Cares Act). Four specific findings were found. Recommendations made were specific contract items, Legislative intent needs to be clearer, businesses receiving awards need to be researched in detail and filing UCC filings to better protect UCEDA. It was strongly recommended that UCEDA take administration fees moving forward if issuing grants. Marketing of the program was also noted as an issue.

3-27-24 Deputy Comptroller attended, no comment

MEMORANDUM FROM THE
ULSTER COUNTY OFFICE OF THE COMPTROLLER

March S. Gallagher, Esq.
Comptroller



Alicia DeMarco, CPA
Deputy Comptroller

To: County Executive Jen Metzger
Legislative Chair Tracy Bartels

From: March Gallagher, Ulster County Comptroller

Re: Enterprise West Expenses and Financial Statement Presentation

Date: February 2, 2023

While conducting an audit of the real property tax collections in Ulster County, the Comptroller's Office has identified that expenditures related to operations and maintenance (O&M) and property taxes related to the Tech City West Campus properties were paid by Ulster County on behalf of UCEDA. **These expenditures were made without appropriate approval and are not accurately reflected in either organization's accounting records. The Comptroller's Office will cease to approve any future expenditures related to Enterprise West without an appropriate remedy.**

Our relevant concerns include:

- Tax and maintenance payments have been and are being made by Ulster County on behalf of UCEDA for Enterprise West without explicit UCEDA Board or Ulster County legislative approval.
- Repairs, maintenance, and utility bills of \$287,699.18 were paid by Ulster County after the properties were transferred to UCEDA. These costs continue to accrue and be paid on behalf of UCEDA by the County to date.
- Ulster County paid \$1,035,783.25 in school taxes, \$523,229.74 of which was for the period of UCEDA's ownership beginning on May 20, 2021.
- School taxes paid late included \$269,303.64 in interest, \$133,263.91 of which was for the 2021/2022 school tax year during the period of UCEDA's ownership.
- Ulster County miscalculated interest for school taxes paid on the two parcels the of Enterprise West leading to an overpayment of \$175,442.57 that our office has worked to have refunded. The overpayment of interest included 2020/2021 school tax overpayment of \$57,555.27 which is attributed to when Ulster County had ownership and an overpayment for 2021/2022 school tax interest of \$117,887.30,000 under UCEDA ownership.

- Reporting to the Legislature on expenditures for Enterprise West did not include all the O&M identified in the financial system, taxes or interest paid, or other carrying costs such as insurance that are paid as part of larger expenditures.
- Given the size of the transactions for back taxes and other costs associated with repairs, upgrades, maintenance and operating the expenditures for these properties, if properly accounted for, would have had a material impact on UCEDA's financials.
- The County may be leasing Enterprise West space to a number of users not approved by either the UCEDA or Ulster County Legislature.
- Partial occupancy of the building presents risks which have resulted in emergency calls to the building, including one for theft of copper.
- UCEDA has filed for a nonprofit exemption from tax on Enterprise West and without Board or Legislative oversight, including the consideration of potential for-profit tenancies, which may compromise the property's tax-exempt status.

Any taxes that were payable on behalf of UCEDA for taxes owed should have been approved by legislative resolution to appropriate the necessary County funds utilized to pay these expenses. The backup documentation in the financial system for Ulster County payments for Enterprise West expenditures such as school tax cite to Resolution 21-112 (attached). Resolution 21-112 solely authorized the transfer of Enterprise West to UCEDA, identifying the fiscal impact as "NONE." This resolution does not speak to the payment of O&M or property taxes by the County.

Expenses related to the West Campus and the maintenance and operation of UCEDA owned assets are not transparent or identifiable by anybody charged with oversight and should be included in UCEDA's financial statements. At present, the 2021 UCEDA financial statements are misleading, not disclosing over \$645,817.42 in taxes and interest expenses, and \$287,699.18 for operations and maintenance paid for by Ulster County during UCEDA's ownership of the property. The 2022 budget included \$279,650 for O&M expenditures for the Enterprise West property (101 Enterprise Drive) and expenditures were approved by the Comptroller's Office in accordance with this budget item. The 2023 adopted budget reduced expenditures for 101 Enterprise Drive to \$0.00.

The County and UCEDA must determine a method to appropriately account for these expenditures that provides transparency, accountability and appropriate oversight. Either: 1) UCEDA pays the expenses directly with funds provided by Ulster County reimburses or 2) the County can directly pay the expenses, but this should be noted in UCEDA's financials. Option 1 provides far more transparency.

The absence of these expenses and the carrying costs of the asset on UCEDA's financial statements is an impediment to transparency, a circumvention of appropriate oversight, a misrepresentation of the organization's financial information, and in this circumstance concealed an accounting error that appropriate oversight might have identified and remedied.

If the Board of UCEDA was fully aware of the expenditures associated with the property it would have informed their deliberations for setting a price for the property. The UCEDA Board authorized a purchase and sale agreement with National Resources and that agreement was executed June

8, 2022. The transfer of the property to National Resources has yet to occur, and UCEDA, and ultimately Ulster County continues to incur and pay costs related to the property. The failure of UCEDA to account for the carrying costs of the property means that the Board is unable to perform their duty of care to the organization. The Ulster County funds utilized to maintain the property without approval of the Legislature prevents appropriate County oversight.

We respectfully request that all payments made on behalf of UCEDA by the County be approved by the Legislature, by resolution, and that any payments related to assets owned by UCEDA be presented to the UCEDA board and reflected on UCEDA's financial statements to ensure appropriate oversight and transparency in the best interest of Ulster County taxpayers.

MEMORANDUM FROM THE

ULSTER COUNTY OFFICE OF THE COMPTROLLER

March S. Gallagher, Esq.
Comptroller



Alicia DeMarco, CPA
Deputy Comptroller

Charles Dinstuhl, CPA
Director of Internal Audit & Control

MEMORANDUM

To: Tracey Bartels, Ulster County Chair

From: March Gallagher, Comptroller

Re: Governance and Financial Matters at UCEDA

Date: July 10, 2023

I want to share with you, as the elected body who voted on the contract to distribute ARPA funding through the CARES II Program, why the Comptroller's Office has decided to audit the allocation of CARES I and CARES II funds. Our Office is working with County Executive Metzger, and we greatly appreciate the Administration pausing in the distribution of the CARES II funds while we review the program's implementation and compliance with ARPA funding requirements.

The Comptroller's Office was asked to "claims audit" the invoices from businesses seeking payment through the CARES II program. Our office currently reviews most claims for payment made to Ulster County but not those made to UCEDA by vendors and grantees. We have proposed claims auditing all of the UCEDA expenditures and when the request came to claims audit CARES II we wanted to oblige. Unfortunately, when the awardees of the program were made public, it became clear that recommendations we had made previously with regard to CARES II were not adopted, and we identified potential issues related to compliance with funding requirements. We are concerned that various management issues at UCEDA prevent the organization from being an effective ARPA subrecipient at this time.

In addition to the concerns we identified related to the CARES distributions, we also specifically raised the following issues with regard to UCEDA over the last year to Legislative and Administrative leadership:

- 1) Simultaneous submission of the same invoices to the County and UCEDA for payment;
- 2) Expenditures for maintenance and taxes for the Enterprise West property beyond the timeframe and budget originally intended;
- 3) Board approvals of transactions without transparency as to the terms of the transaction such as the sale price of Enterprise West to iPark;

- 4) Opaque and inaccurate financial statements throughout the summer and fall of 2022 that failed to show activity for the CARES I \$997k program and failed to show the receipts from National Resources for the iPark property transfers;
- 5) No insurance coverage on revolving loan agreements;
- 6) Release of liens on the iPark property transfers with limited justification and only on the most valuable properties;
- 7) Exclusion of CFO from portions of critical meetings;
- 8) No financial statements provided for board approval since December 2022; and
- 9) Invoices submitted for approval with inappropriate expenditures.

This combination of management issues, along with some of the strict requirements around federal funding, have raised a heightened awareness with respect to UCEDA's transparency and accountability and have been identified as potential risks through our continuous risk assessment process.

We appreciate the Metzger Administration working with us to review these grants before further distribution. Furthermore, we appreciate that County Executive Metzger has already begun to implement significant financial and management changes at UCEDA. The Comptroller's Office is working with the Executive to expedite review so that those funds that are appropriate for distribution reach the intended recipients.