



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Real Estate Portfolio

Niagara Frontier Transportation Authority



Report 2012-S-36

March 2014

Executive Summary

Purpose

To determine whether the Niagara Frontier Transportation Authority has accounted for all of its real estate holdings, established a value for those holdings, and determined the need to either hold or dispose of properties, and whether the Authority has disposed of real property on terms beneficial to the State. The audit covers the period January 1, 2010 through October 24, 2012.

Background

The Niagara Frontier Transportation Authority (Authority) oversees bus and rail services in Niagara and Erie counties. Public Authorities Law Section 2896 requires each public authority to maintain adequate inventory controls for its property and report annually on all property held. It also requires authorities to transfer or dispose of unneeded excess property as promptly as possible. The Authority reports it owned 63 properties as of March 31, 2012.

Key Findings

- The Authority has not accounted for all of its property holdings. Specifically, the Authority's property reports significantly understate its holdings.
- The Authority has not established a current market value for its property holdings.
- The Authority does not document the needs assessment it conducts to determine whether to hold or dispose of its property holdings. In some cases, it has held onto unneeded parcels for many years, including valuable waterfront property.
- The Authority could improve its procedures to better ensure it obtains fair market value when leasing properties.

Key Recommendations

- Ensure annual property reports include all Authority properties.
- Estimate and record current market values for all property holdings.
- Adhere to set timelines for disposing of all unneeded property holdings.
- Establish procedures that define the specific steps for setting lease and license rates for using Authority property.

Other Related Audits/Reports of Interest

[Metropolitan Transportation Authority: Real Estate Portfolio \(2009-S-10\)](#)

[Metropolitan Transportation Authority: Real Estate Portfolio \(2011-F-30\)](#)

[Rochester-Genesee Regional Transportation Authority: Real Estate Portfolio \(2012-S-90\)](#)

[Capital District Transportation Authority: Real Estate Portfolio \(2012-S-91\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

March 27, 2014

Mr. Howard A. Zemsky
Chairman
Niagara Frontier Transportation Authority
181 Ellicott Street
Buffalo, NY 14203

Dear Mr. Zemsky:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Real Estate Portfolio*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of Public Authorities Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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State Government Accountability Contact Information:

Audit Director: Carmen Maldonado

Phone: (212) 417-5200

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

This report is also available on our website at: www.osc.state.ny.us

Background

The Niagara Frontier Transportation Authority (Authority) was created by an Act of the New York State Legislature in 1967 to develop and improve transportation related services within the Niagara Frontier transportation district. In May 1969 the Authority acquired the assets of the former Niagara Frontier Port Authority. The Authority is governed by an 11-member Board of Commissioners (Board) appointed by the Governor with the advice and consent of the Senate. The Board governs and sets policy for the Authority. The Executive Director, subject to policy direction and delegations from the Board, is responsible for all activities of the Authority.

The Authority oversees bus and rail services in Niagara and Erie counties. The Authority operates the Buffalo Niagara International and the Niagara Falls International Airports. Additionally, the Authority operates a small boat harbor and two metro transit centers which are primary terminals for private inter-city bus service for Niagara and Erie counties. In conjunction with these duties, the Authority manages more than 2,000 acres of real estate property; port properties, including a small boat harbor and related facilities; bus loops; rail rights-of-way; airport and waterfront property.

The Authority can dispose of property when it is not needed for transportation purposes. Furthermore, the Authority may rent, lease or grant easements or other rights in any land or property it owns. Such arrangements and property disposals should be on terms beneficial to the State. Section 2896 of the New York State Public Authorities Law (Section 2896) requires authorities to transfer or dispose of unneeded excess property as promptly as possible.

The Authority has a number of fixed-term operating leases at its airport, marine and transportation center facilities. The leases generally provide for rentals determined on the basis of a rate per square foot occupied or a percentage of the lessee's gross revenues with guaranteed minimum amounts. For the year ended March 31, 2012, the Authority reported revenue of \$51.1 million from about 155 leases, licenses, and easements.

Audit Findings and Recommendations

Property Accountability and Valuation

According to Section 2896, each public authority is to publish, at least annually, a report listing all its real property along with any property disposed of. We examined whether the Authority has complied with this requirement and found that it did not.

The Authority reported it owned 63 properties as of March 31, 2012. However, our audit tests found the Authority actually owned 96 properties. The Authority's report did not include two properties acquired in 2007; one property acquired in 2010; and another 32 parcels which are part of the two airports. By excluding these parcels, the Authority's real estate holdings have not been subject to the intended level of public accountability and transparency. Authority officials state that the 32 parcels at the airport are primarily vacant land in airport runway zones. However, we note that the Authority listed other properties that are within the boundaries of the airports. They stated the Authority mistakenly did not report the acquisitions.

We also note that the Authority does not estimate the value for most of its property holdings. Instead, it only obtains appraisals when it wants to dispose of or acquire property. As a result, since many of the properties were acquired years ago, Authority records simply list them at their acquisition cost.

Authority officials indicated State laws do not require them to estimate property values, and they do not see the value of doing estimates. However, other State authorities and agencies routinely estimate their property values to help them make more informed decisions about the cost benefit of disposing of parcels or liability associated with ownership. In this regard, some other transportation authorities estimate property values using their insurance policy value. Another option available to the Authority could be to use the local tax assessor data to develop updated property value estimates.

Recommendations

1. Include all owned properties in annual property reports prepared under the Public Authorities Law as required. Audit the completeness and accuracy of annual property reports before they are published.
2. Periodically estimate current values of all property holdings.

(NFTA officials replied to our draft audit report that they respectfully disagree with the recommendation because there is no requirement in the law or best practices that they are aware of that supports this requirement. They also indicated that the assessed values by the Tax Assessors' Office and the values from their Risk Management Department do not reflect fair market value. In addition, they estimate an initial appraisal of all their property would cost \$300,000 and an update every 1-3 years would be in excess of \$75,000 and it is not worth

the cost.)

Auditor's Comments: NFTA continues to carry its property at values dating back to 1969 for Port properties, 1967 for bus loops and 1988 for rail rights-of-way. As stated in our report, other transportation authorities have updated property values on an annual basis by working with their Engineering/Facilities Management and insurance coverage information. These transportation authorities did not have a requirement in law but see the value in having this information in order to make informed decisions about the cost benefits of disposing of parcels or liability associated with ownership. We urge NFTA officials to revisit their position.

Review of Property Holdings for Disposal

Continued ownership of unneeded property adds to the Authority's maintenance and management responsibilities and consumes valuable resources. Unneeded property also deprives communities of real property tax revenue and prevents possible property development opportunities for public good or to enhance local economies. Section 2896 requires public authorities to periodically review their property holdings to identify any real property that is no longer needed for transportation purposes. However, we found the Authority has held certain properties for years which are not being used for transportation purposes. Yet, the Authority does not generally assess whether such properties can be disposed of.

In response to our preliminary findings, Authority officials state that they will distribute the property list to each program area every January to determine whether all properties are still needed. They indicated the Authority will document the decisions made during these reviews and update its procedures to reflect this new process. This new process takes on added importance considering the Authority has held several valuable, but apparently unneeded, properties for many years.

For over four decades, the Authority held over 400 acres of valuable Lake Erie waterfront property that is not used for transportation purposes. The property contains a boat harbor and beach, seaway piers, a nature trail, a restaurant and bait shop, a port terminal complex totaling about 690,000 square feet of space, and waterfront land and water rights. The port terminal complex, boat harbor and beach alone were appraised at about \$12 million during our scope period. During the two fiscal years ended March 31, 2012, the Authority had an operating deficit for the waterfront properties, excluding the boat harbor, of \$131,000. The boat harbor had an operating surplus for this same period of about \$108,000.

Auditor's Comments: In February 2014, NFTA took action to officially transfer the outer harbor lands to the Erie Canal Harbor Development Corporation for a sum of two dollars.

The Authority has also owned six railroad rights-of-way comprising approximately 14.2 miles since 1988. The total cost for the Authority to maintain and insure these properties is around \$17,000 annually. In 2010, the Authority had a Strategic Assessment (Assessment) prepared to appraise future investment options including railroad development. The Assessment concluded that one of the Authority's rail rights-of-way has moderate to high potential for future development, and

two others low potential. The Assessment did not address the other three rights-of-way, but recommended that the Authority hold all rights-of-way for future development.

Authority management stated the six rights-of-way generate about \$194,000 in annual revenue; two of the six account for about 83 percent of the revenues. The Authority issued a Request For Proposal (RFP) in 2009 to dispose of one of the rights-of-way appraised at approximately \$1 million. This right-of-way only generates \$184 annually and was identified with low potential for future investment. The Authority received five proposals, of which two were responsive. The potential revenue from the responsive proposals would have been \$215,000. Due to the low bids received and the recommendation to hold all rights-of-way, the Authority did not sell this property.

Authority officials state that they plan to hold right-of-way properties for future transportation uses, and use the revenues generated to support current needs. In light of the Authority's financial situation, we question whether this is a prudent strategy.

Recommendations

3. Ensure that the new process for reviewing real estate holdings to identify properties for potential disposal is implemented with necessary user training and is complied with.

(In response to our draft report NFTA officials stated they have implemented a new process for reviewing real estate holdings. Officials also stated our report was incorrect regarding the waterfront property owned by NFTA, but declined to further elaborate.)

Auditor's Comments: We are pleased that NFTA has taken action to formalize its review of real estate holdings. However, based on NFTA's response it is unclear if necessary user training was provided and what steps were taken to ensure compliance. Regarding the issue of the waterfront property, as NFTA has provided no evidence to support its statement, we stand by our audit findings.

4. Dispose of right-of-way properties with low development potential, and those not addressed by the 2010 Assessment, as soon as possible unless their future need can be clearly demonstrated.

(NFTA officials replied to our draft audit report, they respectfully disagree with our recommendation to dispose of right-of-way property with low development potential because they are of the opinion that these properties could be necessary to develop and complete a comprehensive region transit network.)

Auditor's Comments: NFTA now has a formal annual property review process that will assess "whether each property is needed and in use, being held for potential future use, or is not needed and can be disposed of through sale or lease." NFTA should consider when assessing its right-of-ways that it has been over 25 years since they were acquired and yet no firm plans for the development of a comprehensive region transit system currently exist.

Property Rental Fees

Leases should be valued to ensure that the Authority receives fair and equitable compensation for private use of its property. We reviewed eight leases and three licenses for the use of Authority property and found the Authority used inconsistent methods to establish its fees. Three agreements did not have escalation clauses and the Authority did not periodically re-evaluate whether the fees charged reflected current market value.

Also, the Authority does not have documented procedures that formalize the specific steps for setting lease and license rates. Authority officials said they have adopted informal practices based upon the unique circumstances involved in each situation. Nevertheless, written procedures would help ensure the Authority takes consistent steps when determining fees for each property lease and license.

Recommendation

5. Establish formal procedures that define the specific steps for setting lease and license rates for the use of Authority property. Include provisions for documenting the basis for rate selection and evaluating whether rates remain fair and equitable throughout long-term agreements.

Audit Scope and Methodology

Our audit determined whether the Niagara Frontier Transportation Authority has accounted for all of its real estate holdings, established a value for those holdings, and determined the need to either hold or dispose of properties, and whether the Authority has disposed of real property on terms beneficial to the State. The audit covered the period January 1, 2010 through October 24, 2012.

To accomplish our audit objectives we interviewed Authority officials, and reviewed Authority Board and Committee meeting minutes, Authority Guidelines for the Acquisition and Disposition of Real Property, and relevant laws. We also reviewed Erie County and Niagara County Tax Assessment Records, and visited and observed selected Authority properties.

We also reviewed requests for proposals, real property appraisals, leases, licenses, and easements. We selected a judgmental sample of eight leases and three licenses of the 155 leases and licenses. Our selection included different types of properties and tenants, including airline, rental car, food concession and marine supply businesses, as well as office and warehouse space and land rentals. Our selection criteria also considered the amount of revenue received and selected some large and small amounts. We reviewed the method used to obtain the tenant (e.g., RFP, marketing, request from tenant), the basis used to set the lease or license amount and whether the tenant appeared to be paying fair market value for the use of the property.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our audits to obtain sufficient, appropriate

evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

Our audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of Public Authorities Law.

Reporting Requirements

We provided a copy of this draft report to Niagara Frontier Transportation Authority officials for their review and comment. Their comments were considered in the preparation of this final report and are included in their entirety at the end of this report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Niagara Frontier Transportation Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

Carmen Maldonado, Audit Director

Robert Mehrhoff, Audit Manager

Mark Ren, Audit Supervisor

Wayne Bolton, Examiner-in-Charge

Robert Horn, Staff Examiner

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller

518-474-4593, asanfilippo@osc.state.ny.us

Tina Kim, Deputy Comptroller

518-473-3596, tkim@osc.state.ny.us

Brian Mason, Assistant Comptroller

518-473-0334, bmason@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



Niagara Frontier Transportation Authority
Serving Buffalo Niagara

181 Ellicott Street
Buffalo, New York 14203
716-855-7300
Fax: 716-855-7657
TDD: 855-7650
www.nfta.com

December 16, 2013

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street, 21st Floor
New York, New York 10038

Re: November 21, 2013 Draft Real Estate Portfolio Report

Dear Ms. Maldonado:

Thank you for giving the Niagara Frontier Transportation Authority ("NFTA") the chance to comment upon your office's draft report. We appreciate the time invested in preparing the report and the effort to ensure that the NFTA is in compliance with the law and is managing governmental resources effectively and efficiently. Our response to the draft report is set forth below.

Property Accountability and Valuation

1. Include all owned properties in annual property reports prepared under the Public Authorities Law as required. Audit the completeness and accuracy of annual property reports before they are published.

As set forth in the NFTA's August 31, 2012 response to the preliminary audit finding, the NFTA has revised its property list to include references to all real property owned by either street address and/or SBL number. The list is audited annually to ensure that recent acquisitions/dispositions are included.

2. Periodically estimate current values of all property holdings.

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The NFTA respectfully disagrees with this recommendation. First, there is no requirement in the law or best practice that the NFTA is aware of that supports this requirement. As your office notes in the event the NFTA deems property excess an appraisal is prepared and the property is required to be sold at fair market value.

Second, it has been our experience that the assessed values prepared by the County Tax Assessors' Offices for the NFTA property do not reflect market value. The NFTA's property is not taxable and therefore the assessments for our properties are rarely updated. Similarly, the values that our Risk Management Department has for real property are not prepared for a fair market value analysis but rather what it would take to replace a building. That is why when we are selling or purchasing real property we use appraised values prepared by professional real estate appraisers.

Third, the cost of an initial appraisal of all of the NFTA's real estate holdings would be in excess of \$300,000 and the cost to update that appraisal every 1-3 years would be in excess of \$75,000. It is our opinion that this expenditure of public funds is not warranted, given that the vast majority of the NFTA's property holdings, the Airports, Transportation Centers, Bus Garages, Rail Yards and Rail Stations, are core to the NFTA's mission and will not be deemed excess and sold except under extraordinary circumstances.

Review of Property Holdings for Disposal

3. Ensure that the new process for reviewing real estate holdings to identify properties for potential disposal is implemented with necessary user training and is complied with.

The facts set forth in the Draft Report regarding waterfront property owned by the NFTA but not used for transportation purposes are not accurate and were not set

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out in your office's preliminary findings. However, given the NFTA's decision to sell this property we do not see any benefit at this point to correcting your report. The NFTA has, as set forth in our letter of August 31, 2012, instituted a formal annual property inventory review, which includes an assessment of whether each property is needed and in use, being held for potential future use, or is not needed and can be disposed of through sale or lease. The inventory review process has been incorporated into our Guidelines for Acquisitions and Dispositions of Real Property.

4. Dispose of right-of-way properties with low development potential, and those not addressed by the 2010 Assessment, as soon as possible unless their future need can be clearly demonstrated.

As noted in the NFTA's response to the preliminary audit finding dated September 11, 2012, the NFTA is specifically authorized by law to hold real property for future transportation purposes. Sections 1299-e (7), 1299-g (5) and 1299-r of the Public Authorities Law. Real property in the form of abandoned railroad right-of-ways was purchased by the NFTA to preserve land necessary to develop and complete a comprehensive region transit network. The original 1971 Transit Development Program (TDP) provided a detailed "blueprint" for future transit development in the Niagara Frontier Region. This blueprint was reaffirmed in the 1989 TDP Update and the 2010 NFTA Strategic Assessment also identified and rated potential corridors for rail expansion. In our efforts to control and maintain right-of-ways we are protecting our ability to complete the region's transit and transportation system.

Rail passenger transportation expansion has also been a component of the region's Long Range Plan and an element of the NFTA's planning process since the completion of the current rail line in 1986. New rail passenger transportation projects are extremely costly. In our

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efforts to minimize potential project costs, community disruption and dislocation associated with construction of rail extensions or other dedicated alignment transit improvements the NFTA has developed a full consideration of strategies that utilize existing rights-of-way. The use of existing rights-of-way will save taxpayers hundreds of millions of dollars and represents an opportunity to use corridors originally developed for transportation thereby avoiding problems associated with a major public transportation construction project.

The NFTA respectfully disagrees with the audit recommendation and will continue to hold right-of-way properties for future transportation uses.

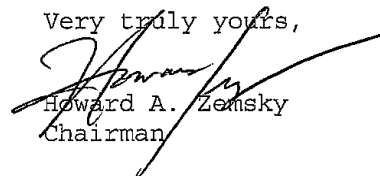
Property Rental Fees

5. Establish formal procedures that define the specific steps for setting lease and license rates for the use of Authority property. Include provisions for documenting the basis for rate selection and evaluating whether rates remain fair and equitable throughout long-term agreements.

The NFTA will continue to ensure that it obtains fair market value for all leases and licenses.

Again, thank you for the opportunity to respond to the draft review. If you have any questions, please do not hesitate to contact me or any member of my staff.

Very truly yours,



Howard A. Zemsky
Chairman