



Mount Vernon Industrial Development Agency

Project Approval and Monitoring Report of Examination

Period Covered:

January 1, 2012 — July 29, 2013

2013M-364



Thomas P. DiNapoli

Table of Contents

	Page
AUTHORITY LETTER	2
EXECUTIVE SUMMARY	3
INTRODUCTION	5
Background	5
Objective	5
Scope and Methodology	5
Comments of IDA Officials and Corrective Action	6
PROJECT APPROVAL	7
Evaluation Criteria	7
Application and Administration Fees	9
Cost-Benefit Analysis	9
Recordkeeping	10
Recommendations	10
PROJECT MONITORING	12
Monitoring PILOTS	12
Reporting	15
Evaluating Project Performance	15
Monitoring Capital Investment	16
Recommendations	17
APPENDIX A Response From IDA Officials	18
APPENDIX B OSC Comments on the IDA Officials' Response	25
APPENDIX C Audit Methodology and Standards	27
APPENDIX D How to Obtain Additional Copies of the Report	28
APPENDIX E Local Regional Office Listing	29

State of New York Office of the State Comptroller

Division of Local Government and School Accountability

April 2014

Dear City Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and City Council governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Mount Vernon Industrial Development Agency, entitled Project Approval and Monitoring. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

The purpose of an Industrial Development Agency (IDA) is to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining or equipping of certain facilities, thereby improving job opportunities, the health, the general prosperity or the economic welfare of the people. The City of Mount Vernon IDA (MVIDA) is a public benefit corporation established in 1976 for the benefit of the City of Mount Vernon and its residents.

MVIDA is governed by a Board of Directors (Board) which includes the City Mayor, who acts as the chair, and five mayoral appointees. The Treasurer is responsible for the custody of MVIDA funds and for keeping regular books of accounts showing receipts and expenditures, and the Secretary to the Board is responsible for MVIDA records. The Board appointed the Secretary to the Board on May 1, 2013 and on October 21, 2013 appointed the Secretary to the Board as Executive Director/Secretary, effective November 1, 2013.

Scope and Objective

The objective of our audit was to examine MVIDA operations to determine if the Board applied a uniform system for project approval and monitored approved projects for the period of January 1, 2012 through July 29, 2013. Our audit addressed the following related questions:

- Did the Board have formal criteria for selecting applicants that received economic development incentives, and did it consistently apply those criteria when approving projects?
- Did the Board design and implement an adequate system to monitor, evaluate and manage benefits and incentives granted to firms or businesses?

Audit Results

Although MVIDA officials adopted a Uniform Tax Exempt Policy (UTEP) in October 1996, they did not consistently apply the UTEP provisions. Some Board members were not aware that a UTEP existed. In addition, MVIDA officials did not have specific criteria to document how they arrived at their decisions when approving or denying projects. Furthermore, several of the projects that we reviewed did not include a cost-benefit analysis to show that the Board had justification to award low-cost financing or tax-exempt status to these projects. Additionally, no application was on file for one project and several executed project documents, such as signed leases, amendments and authorizing resolutions for projects, could not be found, making it impossible to ascertain the basis of Board decisions or when the Board actually approved contracts and what was included in those contracts.

MVIDA officials did not adequately monitor MVIDA-sponsored projects to ensure that they made reasonable progress toward their employment projections or other goals stated in their applications. Moreover, they did not impose penalties on businesses in cases where projects failed to create or retain jobs as projected. As a result, there is limited assurance that MVIDA projects have met their performance goals and benefited taxpayers.

Comments of Local Officials

The results of our audit and recommendations have been discussed with MVIDA officials and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, MVIDA officials generally agreed with our recommendations and indicated that they planned to take corrective action. Appendix B includes our comments on issues raised in MVIDA's response letter.

Introduction

Background

Industrial Development Agencies (IDAs) are public benefit corporations created by special legislation to benefit a municipality and its inhabitants. The powers and duties of IDAs are set forth under General Municipal Law (GML). The purpose of an IDA is to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining or equipping of certain facilities, thereby improving job opportunities, the health, the general prosperity or the economic welfare of a community.

The City of Mount Vernon Industrial Development Agency (MVIDA) is a public benefit corporation established in 1976 for the benefit of the City of Mount Vernon (City). GML establishes the parameters within which MVIDA must operate. MVIDA by-laws establish the powers and duties of its various officers. MVIDA is governed by a Board of Directors (Board) which includes the City Mayor, who acts as the chair, and five mayoral appointees. By-laws stipulate that the Treasurer is responsible for the custody of MVIDA funds and for keeping regular books of accounts showing receipts and expenditures, and the Secretary to the Board is responsible for MVIDA records. The Board appointed the Secretary to the Board on May 1, 2013 and on October 21, 2013 appointed the Secretary to the Board as Executive Director/Secretary, effective November 1, 2013.

Objective

The objective of our audit was to examine MVIDA operations to determine if the Board applied a uniform system for project approval and monitored approved projects. Our audit addressed the following related questions:

- Did the Board have formal criteria for selecting applicants that received economic development incentives, and did it consistently apply those criteria when approving projects?
- Did the Board design and implement an adequate system to monitor, evaluate and manage benefits and incentives granted to firms or businesses?

Scope and Methodology

We examined documents for MVIDA projects that were active during the period January 1, 2012 through July 29, 2013.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report.

**Comments of
IDA Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with MVIDA officials and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, MVIDA officials generally agreed with our recommendations and indicated that they planned to take corrective action. Appendix B includes our comments on issues raised in MVIDA's response letter.

The Board of Directors has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board of Directors to make this plan available for public review in the Secretary to the Board's office.

Project Approval

GML provides that certain types of projects are eligible for IDA assistance. These include industrial projects (i.e., manufacturing, assembly, processing and product research and development) and non-industrial projects (i.e., warehouse, wholesale/distribution, qualified retail, office, hotel/motel and recreational businesses). Given the breadth of these possible activities, each IDA typically establishes project criteria based on the economic needs and goals of the community it serves. Such criteria can help ensure that all project applications are measured against the same standards.

GML also requires each IDA to establish a Uniform Tax Exempt Policy (UTEP) which provides the Board with detailed guidelines to make project approval or denial decisions. Because business owners are eligible for real property tax abatements and typically enter into payment in lieu of taxes (PILOT) agreements, the IDA's UTEP should also list the specific reasons why a project would be eligible for a general PILOT or any deviation from the general PILOT. Sound business practices also require that IDA officials verify the information on project applications and prepare a cost-benefit analysis of each prospective project, comparing the cost of the requested assistance to the intended project benefits to the community, to help and support their decision to either approve or deny a project application.

Although MVIDA officials adopted a UTEP in October 1996, they did not consistently apply the UTEP provisions. Some Board members were not aware that a UTEP existed. In addition, MVIDA officials did not have specific criteria to document how they arrived at their decisions when approving or denying projects. Several of the projects that we reviewed did not include a cost-benefit analysis to show that the Board had justification to award low-cost financing or tax-exempt status. Additionally, no application was on file for one project and several executed project documents, such as signed leases, amendments and authorizing resolutions for projects, could not be found, making it impossible to ascertain the basis of Board decisions or when the Board actually approved contracts and what was included in those contracts.

Evaluation Criteria

MVIDA provides eligible businesses with financial assistance in the form of low-interest bonds, tax abatement for real property tax, and/or tax-exempt status for State sales and mortgage recording tax. In return for MVIDA incentives, approved projects should deliver documented benefits that will help revitalize depressed areas, improve quality of life, increase the tax base or provide affordable housing

for community residents. In addition to UTEP procedural guidelines, MVIDA officials should establish specific criteria for evaluating all project applications in a consistent manner and to ensure that only qualified and deserving businesses receive the taxpayer-funded MVIDA benefits. MVIDA officials should also document their rationale, based on these evaluation criteria, for making the decision to either approve or deny benefits to each applicant.

MVIDA requires an introductory application, an inducement resolution and an authorizing resolution¹ for each project. However, it does not require a standard application form. The project application provides for estimates of performance and cost so that interested parties would be able to determine the scope of the project and ascertain the cost and benefits that would accrue when the project is completed. The project application includes a description of the project, project owners, type of entity, cost and other pertinent information.

We examined project applications for seven of 18 projects that had active PILOTs. The estimated cost of these projects was \$62.3 million:

- 650 Columbus Avenue – Acquisition and renovation of an 85,000 square foot building, machinery and equipment to be used for industrial, distribution, commercial or retail.
- A-Val Architecture – Acquisition of three properties to operate an architectural metal manufacturing and installation facility.
- American Christmas – Acquisition of a warehouse, manufacturing and office facility.
- G&S South/Target – Acquisition and development of land, installation of machinery and equipment for commercial purposes, and a retail outlet for Target and TJ Maxx.
- Grace Towers – Construction of 133 middle income housing units.
- Pepsi – Expansion and improvement for relocation of beverage distribution.
- Sanford Terrace – Construction of 55 affordable housing units for senior citizens.

¹ An inducement resolution documents the intention of the parties to which the Board agrees, and the authorizing resolution shows what project provisions the Board approved.

MVIDA officials were not able to provide any formal or specific criteria that they used to evaluate any of the seven projects. They did not document how they arrived at their decisions in approving or denying project applications.

Application and Administration Fees

IDAs charge application fees to help with the cost of reviewing and approving applications. In addition, IDAs generally charge administrative fees to assist with the cost of executing legal documents that are required for each project and for the monitoring of and recordkeeping for projects.

MVIDA requires an application for each project but does not specify a fee amount on the standard application form. Some applicants are required to pay an application fee, while others are not. MVIDA charges administrative fees in lease agreements and inducement agreements.

We found that none of the seven projects that we reviewed paid an application fee. MVIDA officials charged six projects a \$5,000 annual administration fee in their lease agreements, and omitted the administration fee from the Sandford Terrace lease agreement. However, of the six projects charged an administration fee, only G&S South paid the fee in 2012. In addition, officials were only able to provide authorizing resolutions approving three of the seven projects: Pepsi, G&S Southside and American Christmas.

Cost-Benefit Analysis

Good business practices dictate that IDA officials prepare a cost-benefit analysis for each proposed project based on the information provided in the application. It is important that each cost-benefit analysis include all the costs associated with a project, as well as any benefits to the community that are expected to be derived from the project to help assist the Board in deciding whether to approve or deny a project. Once the cost-benefit analysis has been completed, the IDA officials should compare it to the business owner's submitted application and the IDA's UTEP criteria in order to make appropriate project sponsorship decisions.

We reviewed the applications of seven approved projects to determine if the information that applicants provided was sufficient to perform an analysis of the costs and benefits and, if so, whether such an analysis was performed. The applications for the seven projects contained sufficient information such as project cost and investment, with three applicants (Grace Towers, Sandford Terrace LLC and A-Val Architecture) including a cost-benefit analysis with their applications to MVIDA. However, there was no evidence that MVIDA officials verified the information that the applicants provided, ensured that the information was complete or performed their own cost-benefit analysis of any of these Board-approved projects.

Without verification of the goals that these projects set, such as investments, job creation and retention, and comparing them to the estimated tax benefits that the projects are slated to receive, MVIDA officials would not be adequately informed and they could not be certain that the project estimates were realistic and beneficial to the City. If MVIDA officials approve projects that do not have an adequate balance between the tax benefits and the jobs to be created and retained, then the City may not collect needed tax revenues. For example, the owners of 650 Columbus Avenue invested \$1.1 million in their project while the application estimated a \$4 million investment. A-Val Architecture planned to invest approximately \$5.1 million but the 2012 annual report indicated that they invested \$4.1 million. Both of these projects obtained favorable tax exemptions through PILOTS.

Recordkeeping

The Board and MVIDA staff need accurate and up-to-date records so they can manage daily operations and have access to information for decision making, auditing and reporting purposes. In addition, accurate operating records can provide important evidence of transactions when enforcing contract requirements or collecting outstanding payments.

MVIDA project activity records were not suitably maintained and prevented officials from providing information that we required to complete our audit. Much of the requested information for seven projects could not be found, including vital information such as authorizing resolutions for projects and several signed leases. These records are necessary to provide information on Board decisions, terms of agreements and project commitments. The lack of complete records precluded us from adequately reviewing certain transactions and raises questions as to how MVIDA officials and the Board can adequately monitor operations.

For example, MVIDA officials could not provide us with the application for the G&S South project. In addition, they had no record of the authorizing resolutions for four projects. Without proper documentation in place, MVIDA officials cannot be certain of project commitments and legal obligations to MVIDA and the City.

Recommendations

1. The Board should establish uniform criteria to be used when approving projects.
2. The Board should ensure that all members and staff of MVIDA are aware of the requirements of the UTEP.
3. The Board should determine if an application fee is necessary and, if so, establish such a fee for all projects.

4. If the Board wishes to assess administrative fees, it should establish and enforce clear payment schedules for administrative fees.
5. MVIDA officials should ensure that cost-benefit analyses are completed or verified before Board approval of projects.
6. MVIDA officials should institute procedures to ensure that records for each project, such as signed copies of executed agreements, are complete and available for review.

Project Monitoring

The Board is responsible for monitoring and evaluating the performance of businesses receiving financial assistance and determining whether they are meeting the goals established in their project applications. Without effective monitoring, the Board will not be able to identify and address project shortfalls and may not be able to determine if the projects have achieved the desired benefits.

MVIDA officials did not adequately monitor MVIDA-sponsored projects to ensure that they made reasonable progress toward their employment projections or other goals stated in their applications. Moreover, they did not impose penalties on businesses in cases where projects failed to create or retain jobs as projected. As a result, there is limited assurance that MVIDA projects have met their performance goals and benefited taxpayers.

Monitoring PILOTS

Typically when an IDA approves a project, project managers enter into a PILOT agreement as one of the benefits that is accrued to the project. PILOT payments are usually less than the normal real property taxes that the taxing authorities would have assessed on the project property and is customarily set for a specific number of years after which the property would return to the tax roll.

MVIDA PILOT agreements did not include a clear schedule of payments and payment due dates. In addition, a uniform tax exemption rate was not applied in PILOT agreements to projects of similar purposes. Also, MVIDA officials did not adequately monitor PILOT agreements to ensure that payments were received on time. As a result, certain projects did not make PILOT payments in accordance with PILOT agreements. Furthermore, MVIDA officials did not document and maintain records of amendments to PILOT agreements, making it difficult for MVIDA managers to monitor and ensure compliance.

We examined PILOT applications, agreements and payment records for seven of 18 projects that had PILOT activity in 2012. Our examination disclosed the following:

- 650 Columbus Avenue – The PILOT agreement required a payment of \$1 per square foot for warehouse/manufacturing space with a reported 85,000 square feet. The project owners did not make payments in accordance with the PILOT agreement and owed approximately \$129,000 as of July 13, 2013. MVIDA officials had difficulty determining the correct amount of PILOT because of the complexity and undocumented

changes to the PILOT agreement. Officials made no attempt to initiate PILOT collections until we selected this project for audit. MVIDA officials reported in the 2012 annual report that project managers invested \$1.1 million, while the application estimated a \$4 million investment.

- A-Val Architecture – MVIDA officials planned to charge this project \$1.50 per square foot of warehouse/manufacturing space in the PILOT agreement. Project owners instead opted to apply the City’s tax rate in accordance with option 2 of the PILOT agreement. A-Val Architecture currently owes an estimated \$53,675 in unpaid real property taxes, from 2009 to 2011. According to their application, A-Val Architecture should have invested approximately \$5.1 million but the 2012 annual report indicated they invested \$4.1 million. MVIDA officials were not aware that this project had unpaid property taxes because there was a lapse in monitoring. MVIDA officials started reconciling payments to agreements after we brought discrepancies to their attention.
- American Christmas – MVIDA officials initially established a PILOT payment of \$1.75 per square foot² of warehouse/manufacturing space. This was disputed and reduced by a certiorari judgment to \$1.15 per square foot. Project managers never made PILOT payments because of the dispute and owed the MVIDA approximately \$34,691 as of June 30, 2013. Again, due to the inadequate monitoring by officials, they were not aware that this project owed PILOTs. According to the 2012 report, this project met its application investment estimate of \$3.9 million.
- G&S South/Target – Payments were made in accordance with the PILOT agreement for this project. The 2012 annual report, showed that this project investment amounted to \$10 million. However, MVIDA had no application for this project and, therefore, MVIDA officials would be unable to ascertain whether or not this project met its estimated investment target.
- Grace Towers – According to the PILOT agreement, this project should have started payments in 2008. MVIDA officials informed us that construction was delayed for this project and project managers did not make the PILOT payment when it was due in 2012. Consequently, an MVIDA official requested payment in writing on September 11, 2013, approximately

² Although several projects had similar use (manufacturing/warehouse), MVIDA officials charged them different rates in PILOT agreements which resulted in legal action against the MVIDA.

six weeks after the start of our audit, and project managers paid the MVIDA \$198,117 in October 2013. According to their 2012 report, Grace Towers exceeded its application estimate of \$35 million by investing \$39.2 million. However, no documentation was available to support the information included in the 2012 report.

- Pepsi – This project had a schedule of payments and made payments in accordance with the PILOT agreement. The 2012 report showed that this project met its estimated investment of \$1.7 million. However, no documentation was available to support information included in the 2012 report.
- Sandford Terrace LLC – PILOT payments were made in accordance with the agreement. According to the 2012 annual report, this project exceeded its application investment estimate of \$1.8 million by \$500,000. However, no documentation was available to support information included in the 2012 report.

Our audit determined that four of the seven projects did not pay their respective PILOTs or did not pay the PILOTs on time. A total of \$415,483 was not paid timely and \$217,366 was still outstanding at the time of our audit. Some were in certiorari dispute or were not aware that PILOTs were due because the agreements were not clear and because MVIDA officials did not adequately monitor the PILOTs. The inability to collect PILOTs when they become due could prevent MVIDA from having funds available for future investment to enhance the growth of MVIDA for the benefit of the City.

Additionally, MVIDA officials did not adequately monitor these projects to ensure that they fulfilled application commitments. We found that two of the seven projects reviewed did not meet their application investment commitment. In 2012, MVIDA reported that 650 Columbus Avenue invested 28 percent of the amount estimated in its application and A-Val Architecture invested 80 percent of the amount estimated.

The amount of capital investment will eventually have a significant impact on the assessed valuation of the new buildings or major renovations and impact the amount of taxes that the local government authorities will receive after the PILOT agreements are concluded. Therefore, MVIDA officials cannot be certain that these projects were as beneficial to the City as originally estimated. Consequently, tax revenues could have been abated without sufficient new jobs being created or without enhancing economic activity in the City by not meeting investment commitments.

Reporting

GML requires project managers of a completed project to submit annual reports to OSC and their respective IDA. The IDA must verify this information and incorporate it in its annual report. This report details the number of full-time jobs that were created and retained as a result of the projects. It also highlights benefits that each project received during the period, such as taxes exempted.

MVIDA officials stated that the projects' information was never reported to MVIDA. When we inquired as to the source of the information that MVIDA officials used to prepare their annual report, they informed us that they contacted project managers by telephone and prepared the annual report from information gathered through these telephone conversations. MVIDA officials did not provide evidence of these conversations or any source documentation to support the information included in the annual report. Therefore, the information in the annual report is not reliable. Without substantiated annual performance records from project managers to MVIDA officials, the information in the MVIDA annual report is not sufficient and MVIDA officials do not have adequate information concerning the progress of these projects or whether they are meeting their application commitments. MVIDA reported 18 active projects in its annual report to OSC dated December 31, 2012.

Evaluating Project Performance

The Board has the duty to evaluate project performance to ensure that projects fulfill their application promises and to protect the IDA's and the City's investment. Evaluating projects' performance will enable MVIDA officials to identify delinquent projects and possibly recoup tax exemption status before too much of the City's resources are lost.

As depicted in Table 1, the seven projects we reviewed estimated that they would create 352 new jobs and retain 733 other jobs. However, MVIDA officials reported a total of 414 jobs on December 31, 2012 in the annual report. Of the seven projects that MVIDA officials reported in 2012, four did not meet their application commitments of creating or retaining jobs by a shortage of 708 jobs and two projects exceeded projections by 37 jobs, resulting in a net shortage of 671 jobs for six projects. We could not evaluate performance for one project because we had no application information for comparison. In addition, the difference between jobs to be created and retained versus jobs reported for these four projects could not be verified as the 2012 report only included original estimates and current job totals; it did not include how many jobs were created or retained. Furthermore, MVIDA officials did not provide documentation to support jobs reported in the 2012 annual report, so they cannot be certain that any of the claims for jobs that the projects created or retained were in fact realized.

Table 1: Project Performance					
Project	Jobs To Be Created	Jobs To Be Retained	Total Jobs	Jobs Reported 12/31/12	Difference
650 Columbus Avenue	100	500	600	82	(518)
A-Val Architecture	20	130	150	157	7
American Christmas	84	0	84	40	(44)
G&S South ^a	-	-	-	-	-
Grace Towers	103	0	103	1	(102)
Pepsi	0	103	103	133	30
Sandford Terrace	45	0	45	1	(44)
Total	352	733	1,085	414	(671)

^a No application was received, therefore, no job performance comparison could be calculated.

Without creating and retaining jobs as promised in their applications, projects received tax benefits and low-cost financing without fulfilling their commitments, City taxpayers are not receiving the expected benefits. MVIDA officials took no action to recover benefits that these projects received in lieu of their application promises.

Monitoring Capital Investment

The amount of capital investment that business owners intend to expend is included as part of a project application and cost-benefit analysis, where applicable. The amount of capital investment will eventually have a significant impact on the assessed valuation of the new building or major renovation and directly determine the amount of taxes that the local government will receive after the PILOT agreement expires. It is, therefore, important that MVIDA officials verify the amount of capital that the project applicants invest to ensure that the actual expenditure is comparable to the application amount and cost-benefit analysis. According to the 2012 annual report that MVIDA filed, two of the seven projects that we reviewed, 650 Columbus Avenue and A-Val Architecture, did not meet their application investment commitments. In 2012, MVIDA reported that 650 Columbus Avenue invested \$1.1 million of the \$4 million estimated in its application and A-Val Architecture invested \$4.1 million of the \$5.1 million estimate. Although these projects did not fulfill their application commitments regarding investments, job creation, retention, MVIDA officials took no action to recoup benefits that the projects received based on these commitments.

Project managers included commitments in each application that they submitted to MVIDA. MVIDA officials approved these projects for tax exempt status and to receive low-cost financing. However, MVIDA officials did not verify the information included in these applications.

In addition, MVIDA officials did not monitor these projects to ensure that they fulfilled application commitments. Therefore, MVIDA officials cannot be certain that these projects were as beneficial to the City as originally estimated. Consequently, tax revenues could have been abated without sufficient new jobs being created or without enhancing economic activity in the City by not meeting investment commitments.

Recommendations

7. The MVIDA officials should implement procedures to monitor, project goals. This includes ensuring that:
 - Payments are made in accordance with PILOT agreements,
 - PILOT agreements contain a clear schedule of payments due using a uniform tax exemption rate, and the payment due dates,
 - Adequate records are maintained to enable monitoring,
 - Application requirements such as investment commitments are fulfilled,
 - Completed project information needed for the annual report is required and verified and
 - Project performance expectations are evaluated.
8. MVIDA officials should implement procedures for recouping tax exempt status if a business does not produce the intended benefits.

APPENDIX A

RESPONSE FROM IDA OFFICIALS

The IDA officials' response to this audit can be found on the following pages. The IDA's response letter contained additional attachments. Because the response letter generally describes their contents and importance in sufficient detail, we did not include the attachments in Appendix A.



Mount Vernon Industrial Development Agency
City Hall - Roosevelt Square
Mount Vernon, New York 10550-2060
(914) 699-7230 • FAX (914) 699-1435

Mayor Ernest Davis
Chairman

March 24, 2014

Tenneh Blamah
Chief Examiner of Local Government
and School Accountability
33 Airport Center Drive, Suite 103,
New Windsor, NY 12553

Dear Sirs:

We have acknowledged the findings in your Report of Examination on Project Approval and Monitoring, covering the period January 2012 to July 29, 2013. However, while there were clear findings of accuracies to the degree of information collected, there were also elements of inaccuracies.

As members of Mount Vernon Industrial Development Agency we have always taken in consideration, the By-law of the Agency and are not ignorant to the guidelines of project monitoring and approvals. Also, we will not overlook the mission of the Agency to promote, develop and assist businesses through medium and long term financial assistance and tax incentives for eligible projects. Therefore, we will continue to make intelligent decisions on projects that we believe will attract investors, foster economic growth and enhances the City's strategic growth plans.

Attached, we have distinctively responded to the findings in the draft of your report and have taken the responsibility to work through your recommendations to produce a corrective action plan.

Yours truly,

Margaret Finlayson
Executive Director/Secretary

cc: Mr. Ernest Davis, Chairman of the Board

EXAMINERS' FINDINGS (RECORDKEEPING): By-laws stipulate that the Treasurer is responsible for the custody of MVIDA funds and for keeping regular books of accounts showing receipts and expenditures and the secretary is responsible for MVIDA records. On October 21, 2013, the Board appointed the Secretary to the Board as Executive Director/Secretary, effective November 1, 2013.

The Board and MVIDA staff need accurate and up-to-date records so they can manage daily operations and have access to information for decision making, audit and reporting purposes. In addition, accurate operating records can provide important evidence of transactions when enforcing contract requirements or collecting outstanding payments. MVIDA project activity records were not suitably maintained and prevented officials from providing information that we required to complete our audit. Much of the requested information for seven projects could not be found, including vital information such as final resolutions for provide information on Board decisions, terms of agreements and in one case project application with project commitments.

EXAMINERS' RECOMMENDATION: MVIDA officials should institute procedures to ensure that records for each project such as signed copies of executed agreements are complete and available for review.

MVIDA RESPONSE: Since the beginning of these project activities (2000- July 2013) that were audited, there has been a change in administrative secretaries four times. The new IDA secretary was appointed May 1, 2013 and was later appointed November 1, 2013 to the position of Executive Director/Secretary. Therefore, in your audit draft, with no date of when the new secretary was appointed to Secretary to the Board, it appeared as if the IDA Board did not demonstrate good judgment in appointing an executive director but appointed the same secretary responsible for not maintaining the records.

See
Note 1
Page 25

The IDA Board took corrective actions before and after the audit started. The new IDA Executive Director/Secretary has assumed responsibility for the records going forward and the Board will reinforce in their Corrective Action Plan (CAP) the importance of maintaining the records and the format it should take.

EXAMINERS' FINDINGS (POLICIES): Although MVIDA officials adopted a UTEP in October 1996, they did not consistently apply the UTEP provisions. Some Board members were not aware that a UTEP existed. In addition, MVIDA officials did not have specific criteria to document how they arrived at their decisions when approving or denying projects. Several of the projects that we reviewed did not include a cost-benefit analysis to show that the Board had justification to award low-cost financing or tax-exempt status. Additionally, no application was on file for one project and several executed project documents, such as signed leases, signed PILOT agreements, amendments and final resolutions for projects, could not be found – making it impossible to ascertain the basis of Board decisions or when the Board actually approved contracts, and what was included in those contracts.

- **Evaluation Criteria:** MVIDA officials should also document their rationale, based on these evaluation criteria, for making the decision to either approve or deny benefits to each applicant.

MVIDA RESPONSE: All Board Members are aware of the By-laws and the UTEP of the Agency. Before projects are approved, the members of the Board in their scheduled meetings will discuss the scope of projects for approval, examine the introductory application which outlines the cost of the project and all the necessary processes, then they will instruct the IDA Bond Counsel and IDA attorney to examine and process documents before 'Authorizing Resolutions' are done.

See
Note 2
Page 25

All the IDA's projects establish 'Authorizing Resolutions' in the process of approving projects. During the audit examination, the examiners asked for 'Final Resolutions' but it is not common in our IDA documents to use the word 'Final Resolution' because resolutions are not final until the closing of projects, and documents are signed and released to parties involved. Therefore, the words 'Authorizing Resolutions' are used. For all the projects examined, there are signed leases and PILOT agreements. (Please find them attached, as your reminder). Lengthy discussions regarding the process of the examined projects can be found on recorded tapes and a summary version in our Minutes of the Board. Also, the examiners in their draft fail to mention the dates when these projects were approved. In their examples of poor recording keeping regarding G&S Southside, it should be noted that this project began in the year 2000 (fourteen years ago). Archived documents over this period of time can be difficult to retrieve.

See
Note 3
Page 25

See
Note 4
Page 25

EXAMINERS' FINDINGS (APPLICATION FEE) IDA's charge application fees to help with the cost of reviewing and approving applications. In addition, IDA's generally charge administrative fees to assist with the cost of executing legal documents that are required for each project and for the monitoring and record keeping for projects. MVIDA requires an application for each project, but does not specify a fee amount on the standard application form. Some applicants are required to pay an application fee, others are not. MVIDA charges administrative fees in lease agreements and inducement agreements.

We found that none of the seven projects that we reviewed paid an application fee. MVIDA officials charged six projects a \$5,000 annual administration fee in their lease agreements, and omitted the administration fee from the Sandford Terrace lease agreement. However, of the six projects charged an administration fee, only G&S Southside paid the fee in 2012. In addition, officials were only able to provide final resolutions approving three of the seven projects, Pepsi, G&S Southside and American Christmas.

EXAMINERS' RECOMMENDATION: The Board should determine if an application fee is necessary and establish such fee for all projects. If the Board wishes to assess administrative fees, it should establish and enforce clear payment schedules for administrative fees.

MVIDA RESPONSE: All projects have ‘Authorizing Resolutions’. Please find attached those that were examined and not mentioned in your report: Grace Housing, A-Val Architectural Metal and Sanford Terrace.

It is the standard of the MVIDA to charge an application fee of one hundred dollars (\$100.00). However, all procedures regarding this process will be review and adhere to.

EXAMINERS’ FINDINGS (COST-BENEFIT ANALYSIS): We reviewed the applications of seven approved projects to determine if the information applicants provided was sufficient to perform an analysis of the costs and benefits and, if so, whether such an analysis was performed. The applications for the seven projects contained sufficient information such as project cost and investment, with three applicants (Grace Towers, Sandford Terrace and A-Val Architecture) including a cost-benefit analysis with their application to MVIDA. However, there was no evidence that MVIDA officials verified the information that the applicants provided, ensured that the information was complete or performed their own cost-benefit analysis of any of these Board-approved projects.

EXAMINERS’ RECOMMENDATION: MVIDA officials should ensure that cost benefit analyses are completed or verified, before Board approval.

MVIDA RESPONSE: Mount Vernon IDA did not prepare cost-benefit-analyses for approved projects but instead, examined the cost of projects and the details of them through the scrutiny of the applicants’ financial statements, building plans, Planning and Zoning Board approvals, SEQRA reviews etc. to determine their abilities to complete projects.

Subsequent to these findings during the audit process, the IDA prepared cost-benefit analyses for three projects which were presented before the inducement of these projects. The Mount Vernon IDA will continue with this process to ensure continuation of due diligence on projects before approval.

EXAMINERS’ FINDINGS (PROJECT MONITORING): MVIDA PILOT agreements did not include a clear schedule of payments and payment due dates. In addition, a uniform tax exemption rate was not applied in PILOT agreements to projects of similar purposes. Also, MVIDA officials did not adequately monitor PILOT agreements to ensure that payments were received on time. As a result, certain projects did not make PILOT payments in accordance with PILOT agreements. Furthermore, MVIDA officials did not document and maintain records of signed PILOT agreements and amendments, making it difficult for MVIDA managers to monitor and ensure compliance. We examined PILOT applications, agreements and payment records for seven projects of projects that had PILOT activity in 2012. Our examination disclosed the following:

- 650 Columbus Ave. – The PILOT agreement required a payment of \$1 per sq. ft. for warehouse/manufacturing space with a reported 85,000 sq. ft. The project owners did not make payments in accordance with the PILOT agreement and owed approximately \$129,000 as of July 13, 2013. MVIDA officials had

difficulty determining the correct amount of PILOT because of the complexity and undocumented changes to the PILOT agreement. Officials made no attempt to initiate PILOT collections until we selected this project for audit. MVIDA officials reported that project managers invested \$1.1 million in the 2012 annual report, while the application estimated a \$4 million investment.

- American Christmas – MVIDA officials initially established a PILOT payment of \$1.75 per sq. ft. of warehouse/manufacturing space. This was disputed and reduced by a certiorari judgment to \$1.15 per sq. ft.² Project managers never made PILOT payments because of the dispute and owed the MVIDA approximately \$34,691 as of June 30, 2013. Again, due to the inadequate monitoring by officials, they were not aware that this project owed PILOTs. According to the 2012 report this project met their application investment estimate of \$3.9 million.
- A-Val Architecture – MVIDA officials planned to charge this project \$1.50 per sq. ft. of warehouse/ manufacturing space in the PILOT agreement. Project owners instead opted to keep the building on the tax roll. A-Val Architecture currently owes an estimated \$53,675 in unpaid real property taxes. According to their application A-Val Architecture should have invested approximately \$5.1 million but the 2012 annual report had them as investing \$4.1 million. MVIDA officials were not aware that this project had unpaid property taxes because there was a lapse in monitoring. MVIDA officials started reconciling payments to agreements after we brought discrepancies to their attention.

EXAMINERS’ RECOMMENDATION: Payments are made in accordance with PILOT agreements. PILOT agreements contain a clear schedule of payments due using a uniform tax exemption rate, and the payment due dates.

MVIDA RESPONSE: With regards to the 650 Columbus project, the project activities began in 2000/2001. Therefore, there was no need or reason for the current administration to retrieve a fourteen year old document from archive, when the payments according to the agreement, are current in both rent/leases and PILOT documents. Also, the amount mentioned in your report findings is incorrect and should reflect \$83,000.00. During your investigation, you overlooked an on-time payment of \$45,000.00 (The payment is on file).

See
Note 6
Page 25

As mentioned in your report that the IDA has no signed agreements for the projects reviewed, please find attached, signed PILOT agreements for all projects reviewed. This, I believed was another oversight on the examiners’ part.

See
Note 7
Page 26

A signed PILOT agreement is in place for A-Val Architectural and they are **NOT** on the tax roll. All payments are made to the Mount Vernon IDA and payment demand letters are on file to retrieve the outstanding balance of PILOT and administrative fee for the A-Val’s PILOT year ended 2013.

See
Note 7
Page 26

Regarding the PILOT payment for American Christmas, The Mount Vernon IDA was aware of outstanding PILOT payments and after several telephone conversations and email correspondences, the MVIDA treasurer sent them a formal letter, demanding payment on May 23, 2013. Please find the letter attached which was sent to the CEO of American Christmas. The matter was resolved July 24, 2013 where American Christmas and their attorney realized that they mistakenly paid the City of Mount Vernon Finance Department an amount of \$198,29.94 (on the tax roll) instead of the Mount Vernon IDA for PILOT. This error resulted in a balance of \$34,691.00 and it was paid in full. A reimbursement request was made to City of Mount Vernon Finance Department. Please find attached a copy of the demand for payment letter that was sent to American Christmas via fax.

See
Note 8
Page 26

EXAMINERS' FINDINGS: (REPORTING & EVALUATING PROJECT PERFORMANCES)

MVIDA officials stated that the projects' information was never reported to MVIDA. When we inquired as to the source of the information that MVIDA officials used to prepare their annual report, they informed us that they contacted project managers by telephone and prepared the annual report from information gathered through these telephone conversations. MVIDA officials did not provide evidence of these conversations or any source documentation to support the information included in the annual report. Therefore, the information in the annual report is not reliable. Without substantiated annual performance records from project managers to MVIDA officials, the information in the MVIDA annual report is not sufficient and MVIDA officials do not have adequate information concerning the progress of these projects or whether they are meeting their application commitments. MVIDA officials reported 18 active projects in its annual report to the State Comptroller's Office dated December 31, 2012.

EXAMINERS' RECOMMENDATION: The MVIDA officials should implement procedures to monitor project goals. This includes ensuring that:

- a. Payments are made in accordance with PILOT agreements
- b. PILOT agreements contain a clear schedule of payments due using a uniform tax exemption rate, and the payment due dates
- c. Adequate records are maintained to enable monitoring
- d. Application requirements such as investment commitments are fulfilled
- e. Completed project information needed for the annual report is required and verified
- f. Project performance expectations are evaluated.

MVIDA officials should implement procedures for recouping tax exempt status if the business does not produce the intended benefits.

MVIDA RESPONSE: The Board has the duty to evaluate project performance to ensure that projects fulfill their expectations. Nevertheless, we recognized that there were shortfalls in the overall monitoring and reporting of the projects, with specific reference to the evaluation of project performance. Therefore, we have concurred with this section of your report and will not create excuses or point to areas indicating 'shades of grey' in this section but seek to take corrective action in order to produce a better result going forward.

APPENDIX B

OSC COMMENTS ON THE IDA OFFICIALS' RESPONSE

Note 1

We amended the report to clarify this issue.

Note 2

At the beginning of our audit, we interviewed Board members and only two of them knew what a UTEP was. One member stated that the MVIDA had a UTEP in place and agreed to provide us with a copy. However, she never provided the document. We later found a copy of the UTEP among documents that the Executive Director/Secretary brought from the archives of records maintained by another Board member.

Note 3

During the audit we requested the final resolutions and were informed that the MVIDA used authorizing resolutions. The current Executive Director/Secretary and other employees and Board members searched extensively for such resolutions, but were unable to find them. We have amended the report to use the term “authorizing resolution,” instead of “final resolution.” With no records to show that projects were approved, the Board and MVIDA officials have no way of determining when they were approved.

Note 4

MVIDA officials included G&S South (and other projects) in its 2012 annual report to OSC as active projects. Therefore, MVIDA officials need to maintain documentation and accounting records, such as accounts receivable information, to be able to monitor PILOT payments.

Note 5

The resolutions MVIDA officials provided were “approved as to form” by the MVIDA bond counsel. There was no evidence that the Board adopted any of these resolutions.

Note 6

MVIDA officials reported the 650 Columbus Avenue project as an active project on its 2012 annual report to OSC, requiring MVIDA officials to maintain information to support such reports. In addition, the amount used in our audit report was based on a reconciliation that MVIDA officials prepared and presented to us. This illustrates the complexity of the PILOT agreements and the need for proper records to monitor PILOT agreements.

Note 7

We amended the report accordingly.

Note 8

MVIDA officials did not adequately monitor PILOTs. The payment of \$34,691 was made after MVIDA officials sent the project manager a letter dated October 28, 2013, almost three months after we started our audit. Based on daily interaction between OSC auditors and the MVIDA Secretary, these PILOT accounts were finally reconciled.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our goal was to determine if MVIDA had proper policies and procedures in place to uniformly approve and monitor projects. To accomplish the objective of our audit, we performed the following steps:

- We interviewed MVIDA officials and reviewed the respective laws that were applicable in establishing MVIDA and setting the requirements for typical operations.
- We selected seven projects from a schedule of PILOT payments which included 18 active projects.
- We reviewed project folders containing project applications, lease and PILOT agreements and payment records to determine if payments were in accordance with agreements.
- We reviewed project applications and inducement resolutions to determine if the Board used any uniform criteria to approve projects or to establish PILOT agreements or set administrative, application or security fees.
- We sent financial disclosure forms to all Board members to determine if there were prohibited conflicts of interest.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX D

HOW TO OBTAIN ADDITIONAL COPIES OF THE REPORT

To obtain copies of this report, write or visit our web page:

Office of the State Comptroller
Public Information Office
110 State Street, 15th Floor
Albany, New York 12236
(518) 474-4015
<http://www.osc.state.ny.us/localgov/>

APPENDIX E
OFFICE OF THE STATE COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY

Andrew A. SanFilippo, Executive Deputy Comptroller
Gabriel F. Deyo, Deputy Comptroller
Nathalie N. Carey, Assistant Comptroller

LOCAL REGIONAL OFFICE LISTING

BINGHAMTON REGIONAL OFFICE

H. Todd Eames, Chief Examiner
Office of the State Comptroller
State Office Building - Suite 1702
44 Hawley Street
Binghamton, New York 13901-4417
(607) 721-8306 Fax (607) 721-8313
Email: Muni-Binghamton@osc.state.ny.us

Serving: Broome, Chenango, Cortland, Delaware,
Otsego, Schoharie, Sullivan, Tioga, Tompkins Counties

BUFFALO REGIONAL OFFICE

Robert Meller, Chief Examiner
Office of the State Comptroller
295 Main Street, Suite 1032
Buffalo, New York 14203-2510
(716) 847-3647 Fax (716) 847-3643
Email: Muni-Bufferalo@osc.state.ny.us

Serving: Allegany, Cattaraugus, Chautauqua, Erie,
Genesee, Niagara, Orleans, Wyoming Counties

GLENS FALLS REGIONAL OFFICE

Jeffrey P. Leonard, Chief Examiner
Office of the State Comptroller
One Broad Street Plaza
Glens Falls, New York 12801-4396
(518) 793-0057 Fax (518) 793-5797
Email: Muni-GlensFalls@osc.state.ny.us

Serving: Albany, Clinton, Essex, Franklin,
Fulton, Hamilton, Montgomery, Rensselaer,
Saratoga, Schenectady, Warren, Washington Counties

HAUPPAUGE REGIONAL OFFICE

Ira McCracken, Chief Examiner
Office of the State Comptroller
NYS Office Building, Room 3A10
250 Veterans Memorial Highway
Hauppauge, New York 11788-5533
(631) 952-6534 Fax (631) 952-6530
Email: Muni-Hauppauge@osc.state.ny.us

Serving: Nassau and Suffolk Counties

NEWBURGH REGIONAL OFFICE

Tenneh Blamah, Chief Examiner
Office of the State Comptroller
33 Airport Center Drive, Suite 103
New Windsor, New York 12553-4725
(845) 567-0858 Fax (845) 567-0080
Email: Muni-Newburgh@osc.state.ny.us

Serving: Columbia, Dutchess, Greene, Orange,
Putnam, Rockland, Ulster, Westchester Counties

ROCHESTER REGIONAL OFFICE

Edward V. Grant, Jr., Chief Examiner
Office of the State Comptroller
The Powers Building
16 West Main Street – Suite 522
Rochester, New York 14614-1608
(585) 454-2460 Fax (585) 454-3545
Email: Muni-Rochester@osc.state.ny.us

Serving: Cayuga, Chemung, Livingston, Monroe,
Ontario, Schuyler, Seneca, Steuben, Wayne, Yates Counties

SYRACUSE REGIONAL OFFICE

Rebecca Wilcox, Chief Examiner
Office of the State Comptroller
State Office Building, Room 409
333 E. Washington Street
Syracuse, New York 13202-1428
(315) 428-4192 Fax (315) 426-2119
Email: Muni-Syracuse@osc.state.ny.us

Serving: Herkimer, Jefferson, Lewis, Madison,
Oneida, Onondaga, Oswego, St. Lawrence Counties

STATEWIDE AUDITS

Ann C. Singer, Chief Examiner
State Office Building - Suite 1702
44 Hawley Street
Binghamton, New York 13901-4417
(607) 721-8306 Fax (607) 721-8313