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LOCAL DEVELOPMENT CORPORATIONS: RISKS & BENEFITS

CASE STUDIES IN THE ROCHESTER AREA

Prepared for:
League of Women Voters of Metropolitan Rochester

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SUMMARY

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Local Development Corporations (LDCs) are a little-known creation of local government enabling counties, cities, towns and villages to play a new role in economic development. LDCs allow local governments to assist businesses with specific types of loans and grants, play a more flexible role in public-private partnerships, and even structure arrangements to purchase and develop real estate. Because the state law codifying LDCs includes broad language about their purposes, LDCs have also been used to manage and upgrade government assets, promote tourism and recreation, address unique fiscal problems, and more. At least 16 LDCs operate in the Rochester area. Given that there are no comprehensive public reporting requirements for LDCs, there are likely more than the 16 mentioned here. We have no way of determining whether we have identified all of them.

POWERS OF LDCS

LDCs have special powers in statute allowing them to receive public property that the involved local government concludes is no longer needed for a traditional public purpose. Transfer to an LDC involves a public hearing but does not require a competitive bid process or independent valuation of the asset. Unlike the governments that create them, LDCs need not comply with public procurement laws requiring a competitive process for awarding contracts. Though many employ a competitive bidding process, LDCs may award contracts at will.

POTENTIAL FOR ABUSE?

These powers help LDCs to accomplish their goals, but they also leave open the potential for abuse. CGR's analysis suggests the need for full and public disclosure of LDC activities to ensure that government officials (who often retain the power to appoint LDC board members) do not use LDCs to reward friends and political allies. The sunshine requirements pertaining to LDCs are currently inadequate. LDCs are not specifically required to comply with open meetings and Freedom of Information laws, although court decisions have suggested that some may be legally bound to do so while others are not.

Some of the LDCs that CGR investigated were very forthcoming with information for this report, while others were relatively unhelpful. The ability to find out about LDCs should not depend upon the goodwill of the organization's leadership.

RECOMMENDATIONS

CGR urges Thomas DiNapoli, New York State Comptroller, to use the resources of his office to continue the work we have begun. This is a problem with statewide implications that deserves deeper and broader scrutiny.

We further recommend that the New York State Legislature pass legislation requiring LDCs to routinely disclose financial information, comply with open meetings and open records laws, pay fair market value for property, and solicit bids for work and make these bids public once a vendor has been chosen.

The NYS Legislature should also amend the Public Authorities Accountability Act to clarify its applicability to Local Development Corporations, a change which would address several of the recommendations above. It may be necessary for an entity like one of the state's newspapers to bring an action in court to clarify the applicability of this law to LDCs.

In the absence of action by the state, all local governments should declare that they are going to voluntarily comply with these reforms.

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ACKNOWLEDGMENTS

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STAFF TEAM

Susan Barnes, Vicki Brown, Kathiann Willis and Kirstin Pryor all contributed to this research effort.

INTRODUCTION

Under the terms of a gift from Beatrice Bibby, the League of Women Voters and the Center for Governmental Research jointly agree to embark upon research projects that are consistent with the missions of both organizations. The proceeds of the Bibby gift support these endeavors.

CGR's analysis of local development corporations (LDCs) grew out of the League's ongoing interest in public authorities. Public authorities are agents of state and local government that have been called New York's "shadow government." Much attention has been focused on New York's public authorities within recent years. The NYS Legislature has responded by passing legislation that increases the level of public accountability for authorities, although some voices call for yet more correctives.

The local development corporation is a vehicle that is similar to the authority in some respects. Like the authority, the LDC is formed to serve a public purpose yet stands apart from the public entity that created it. Unlike authorities, however, LDCs are organized as private, not-for-profit corporations. This combination of a public purpose with private means complicates accountability and disclosure.

One aspect of the study of public authorities that surprised researchers was the fact that it was difficult to develop a comprehensive list of public authorities, despite requirements that they report their activities to the public. This same problem is compounded with local development corporations as this public reporting requirement did not apply to LDCs prior to the passage of the Public Authorities Accountability Act of 2005. Nor has passage of this law resolved the situation as some LDCs dispute the universal applicability of this law.

As a consequence, CGR does not claim to have identified all local development corporations in the region, although local governments were asked to provide CGR a list of all LDCs created by them. We are confident that large and active LDCs have been identified, yet smaller entities—particularly those created some years ago—have probably eluded our search. We had hoped to begin our analysis with a list of all statewide LDCs, only to swiftly learn that such a list did not exist nor would be easily compiled.

Furthermore, we have not been successful at learning as much as we would like about the LDCs discussed in this report. Unlike public entities, some of these private corporations dispute the applicability to them of the NYS Open Meetings and Freedom of Information laws. As a consequence, this report is based solely upon voluntary disclosure by the involved entities.

CGR has not uncovered any evidence of undue enrichment by an LDC's appointed "members" or by local government officials creating these corporations. Nonetheless it is disturbing that disclosure and audit requirements are sufficiently lax that violations of the public trust could be difficult to detect. The stakes involved are significant. The Siemens Corporation, for example, is the recipient of two contracts with Monroe County LDCs that are worth millions of dollars to the firm over a period of many years. When decisions involve large sums of taxpayer dollars, absolute transparency should be the rule, which is not the case with local development corporations.

Local Development Corporations: More Shadow Government?

What Are Local Development Corporations?

Local Development Corporations (LDCs) were formally recognized in state law in 1962 by the creation of Article XIX of the Membership Corporations Law*. LDCs had existed in some form for the entire 20th century. The 1962 act gave these disparate entities a statutory home and addressed the disposition of assets when LDCs are dissolved.

Local government can use the LDC vehicle to get involved in economic development in a variety of ways, through assisting businesses with specific types of loans and grants, playing a nonprofit role in public-private partnerships, and structuring arrangements to purchase and develop real estate.

Prior to 1962, local government had had relatively modest involvement in economic development. According to a guide to LDCs produced by the state Conference of Mayors, the state Constitution's prohibition against gifts and loans as well as its requirement that municipalities act only for a public purpose had in the past prevented much economic development activity by local government prior to this legislation.†

"*Traditionally, economic development was not a proper role for local government. However, modern understanding of the interplay between government, the economy, and the community as a whole has gradually brought economic development into the realm of acceptable governmental activity,*" the mayors' guide said.

As the law creating LDCs broadly defines the possible purposes of LDCs to include "lessening the burdens of government," governments have identified many reasons to create LDCs. In the Greater Rochester area, LDCs have been used to manage and upgrade government assets, promote tourism and recreation, address unique fiscal problems, and more.

Purposes of LDCs

LDCs are nonprofit corporations typically created by counties, cities, towns or villages, though technically any one or more individuals at least 18 years of age may incorporate an LDC. The income and operations of LDCs are exempt from taxes, though their property is not. Under Section 1411 of the state's Not-for-Profit Corporation law, LDCs may be created to serve any one of the following purposes:

- Relieve and reduce unemployment,
- Promote and provide for additional and maximum employment,
- Maintain or improve job opportunities,
- Instruct or train individuals to improve or develop their capabilities for such jobs,
- Carry on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area,
- Lessen the burdens of government and act in the public interest.

* LDCs are now addressed in §1411 of Article XIV of the Not for Profit Corporations Law.

† "Local Development Corporations," April 2003, New York State Conference of Mayors and Municipal Officials.

POWERS UNDER THE LAW

The ability to carry on economic development and other activities on behalf of, yet a step removed from, local government is not the only attractive feature of LDCs. State law also empowers them with specific abilities, some of which are not available to other nonprofit organizations. The law allows LDCs to:

- Construct, acquire, rehabilitate and improve for use by others industrial or manufacturing plants in the territory in which its operations are principally to be conducted,
- Assist financially in such construction, acquisition, rehabilitation and improvement,
- Maintain the plants for others in the territory,
- Disseminate information and furnish advice, technical assistance and act as a liaison with federal, state and local authorities with respect thereto,
- Acquire real or personal property,
- Borrow money and issue negotiable bonds, notes and other obligations,
- Sell, lease, mortgage or otherwise dispose of or encumber any industrial and manufacturing plants or any of its real or personal property or any interest therein upon the terms it determines,
- Carry out corporate purposes,
- Foster and encourage the location or expansion of industrial or manufacturing plants in the territory in which the LDCs operations are principally to be conducted.

May Acquire Public Property Without Appraisal

Particularly important are the powers granted to LDCs to acquire property from local government without appraisal or public bidding. A local legislative body may through a resolution determine that a specific piece of real property is not needed by the local government and authorize the government to sell or lease the property to an LDC. Local governments are required to hold a public hearing on the proposed sale or lease, and they must give 10 days public notice of the hearing. The LDC must use the property for the purpose stated in its incorporation certificate. This is an ability unique to LDCs that has become an important element of local economic-development efforts.

May Award Contracts Without Bidding

Unlike the governments that create them, LDCs need not comply with public procurement laws requiring bids for goods and services contracts, a request-for-proposals process for professional service contracts, and award of contracts to the lowest responsive and responsible bidder (for goods and services). Though many employ a competitive bidding process, they may award contracts at will.

Scope of LDC Activities Very Broad

Although the law would appear to limit many of an LDC's activities to "industrial and manufacturing plants," LDCs in the Rochester area have been involved in a wide range of projects, including retail, energy and telecommunications projects. LDCs have interpreted the law to allow a more expanded range of activities by looking to the section outlining their purposes, which includes the broad categories of "lessening the burdens of government" and "acting in the public interest."

Governance

Like other nonprofit corporations, LDCs have "members" who adopt and amend the LDC's bylaws and who select a board of directors (although this is a legal description not to be confused with the more common notion of voluntary membership in an organization like the League of Women Voters, the YMCA or a private club). LDCs are governed by their bylaws, which may set out terms for the board of directors and methods of selection.

In the Rochester area, the power to appoint members or board members often continues to reside with the chief executive of the local government that created the LDC, although the board often retains the right to amend the bylaws without the concurrence of the appointing elected official. For example, the City of Rochester Mayor retains the power to appoint members to two-year terms to the Rochester Economic Development Corporation, with the approval of City Council. The members then elect an 18-member board of directors. Similarly, the Monroe County Executive retains the power to appoint members to several of the LDCs created by county government.

Safeguards

There are some safeguards in the LDC law. LDCs are not allowed to operate for the benefit of their members or boards of directors. The law states that all income and earnings of an LDC shall be used for its corporate purposes and that no part of the income or earnings should profit any individual, corporation or private interest. And LDCs are not permitted to lobby for legislation or participate in political campaigns.

When an LDC is dissolved, the members of the LDC's governing body are not entitled to any distribution of the entity's funds or property. After paying off all the LDC's debts and liabilities, the remaining assets must be distributed to one or more counties, cities, towns or villages within the territory designated in the LDC's incorporation certification.

Advantages of Local Development Corporations

The structure of LDCs offers several benefits to local government, in addition to those described above. As the case studies of Rochester-area LDCs will demonstrate, LDCs allow local government to engage in a legitimate public purpose, particularly one that involves the issuance of debt, yet keep the debt and expense off the books of the government entity, thus not affecting the government's state-imposed debt limit.

Voters may regard this is as an advantage or as an inappropriate vehicle for circumventing a legitimate restriction placed on local government. In addition, using an LDC a local government can exercise influence, if not control, over how land is developed, which can be particularly important to cities and villages with downtowns.

The LDC vehicle can also insulate government officials from unpopular decisions connected to real-estate deals, economic development or other projects. In the legal world, LDCs operate as "bankruptcy remote" entities, meaning that they shield their parent entity (the local government) from losses and bankruptcies.

Public Awareness and Scrutiny

Despite their special powers and important role in local projects, LDCs are not well known to the public. In fact, they often function as an unknown arm of local government. If a citizen wishes to learn more about a particular LDC, the path is not clear. There is often no office to visit, Yellow Page listing to call or web site to search. LDCs often operate as an adjunct to local government, with government officials or employees sitting on the board and/or carrying out some of the activities of the LDC. They may share office space and resources as well as staff with a local government, having no physical identity of their own. Despite this close association with the local government that formed it, it may be difficult to learn very much about an LDC's activities.

Public Disclosure

There is no required public disclosure for all LDCs (although some appear to be covered by the Public Authorities Accountability Act of 2005). LDCs are not required to submit reports on their activities and finances to any government entity, though at least one local attorney advises LDCs to submit reports to the parent government and to the state Authority Budget Office in accordance with the Public Authorities Accountability Act of 2005. The provisions of the act apply to local authorities, including nonprofit corporations affiliated with or created by counties, cities, towns or villages. However, some attorneys question whether the act was intended to apply to LDCs.

As nonprofits, many LDCs file Form 990 tax returns with the Internal Revenue Service. These filings are available to the public upon request or through several Internet sites. The Form 990 lists annual expenses, revenues, assets, liabilities, highest-paid employees, board members and other financial and corporate information.

However, some attorneys believe that LDCs are not required to file 990 returns because of an exception in the IRS rules exempting organizations affiliated with governmental units.

Open Meetings and Freedom of Information Laws

Unlike governments, LDCs are not automatically subject to the state's Freedom of Information or Open Meetings laws requiring documents and gatherings to be open to the public. Some may be, while others may not be, the distinction being determined by how closely they are tied to government. The state Committee on Open Government has issued several advisory opinions in response to questions about whether particular LDCs are required to disclose documents and hold open meetings. The committee's opinions rely on a 1994 Court of Appeals ruling that the Buffalo Enterprise Development Corporation was subject to the Freedom of Information Law (FOIL).

The sense from the committee's opinions is that LDCs are subject to the open-government laws if there is substantial governmental control over the LDCs (for example, a majority of LDC board members are government officials). They may also have to follow the laws simply because they perform governmental functions and their operations are closely tied to government, but there has been no clear line drawn between those subject to the laws and those not.

No Information Clearinghouse

LDCs have not been systematically tracked or studied by any government oversight bodies. While the state Comptroller's Office has expressed interest in analyzing LDCs, it has not issued a report. The state Attorney General's Office oversees all nonprofit organizations but appears to have devoted no special consideration to tracking the work of LDCs. Similarly, CGR could find no statewide or local list of LDCs.

For government officials, this ability to "fly under the radar" and get things done with less "red tape" can be viewed as an important benefit. From the NYS Conference of Mayors LDC guide:

> *"Because LDCs are not 'political subdivisions,' they are not subject to competitive bidding requirements, the Wicks law, notice and hearing requirements. Thus, an LDC can be an invaluable tool – combining the benefits of a corporation with its special powers to achieve a lawful public or quasi-public objective in performing its essential governmental function."*

CASE STUDIES

LDCs often oversee major projects with significant community impact. CGR attempted to identify as many LDCs in the Greater Rochester area as possible through contacting state and local sources and conducting database searches. CGR also wrote to all governments in Monroe County, as well as to each of the surrounding counties, to ask if they had created any LDCs.

CGR examined Form 990 tax forms, certificates of incorporation, web sites and financial statements, where available, to gather basic information about the LDCs included this report.

A table summarizing key pieces of information concerning the local development corporations studied appears in the Appendix. This should not be considered a complete listing of LDCs in the region, however. To the best of our knowledge, Monroe County has created the most LDCs at six, but several smaller towns and villages are also using the LDC vehicle.

The case studies below cover some of the LDCs for which CGR was able to obtain more detailed information through interviews. They illustrate some of the risks and benefits associated with these quasi-governmental bodies.

ROCHESTER ECONOMIC DEVELOPMENT CORPORATION

Possibly the oldest LDC in the Rochester area, the Rochester Economic Development Corporation (REDCO) was founded in 1983 by the city to provide economic development services that the city could not offer. Specifically, the city wanted to offer federal Small Business Administration loans but as a government could not do so. The LDC structure allowed it to begin offering these loans, and over the years REDCO has expanded to provide an array of services and has become a real-estate developer in cases where private developers cannot be attracted to what the city believes is a necessary project.

REDCO offers several different types of low-interest loans and grants to businesses through government programs as well as a revolving loan program funded through the Eastman Kodak Co. REDCO also provides technical assistance with site selection and planning of major projects. In addition, it can facilitate tax credits for projects because it administers the city's Empire Zone, a state program providing tax credits and abatements to eligible projects.

Most of REDCO's major projects are initiated by the city's Department of Economic Development. The department shares staff and office space with REDCO. Deputy Mayor Patricia Malgieri is chairwoman of REDCO, and the Commissioner for Economic Development, Carlos Carballada, is REDCO's CEO. REDCO is governed by an 18-member board selected by 25 corporation members who are appointed by the mayor and approved by City Council. REDCO board meetings are open to the public, though the board does hold closed sessions to discuss the details of some projects under exceptions provided for in the Freedom of Information Law.

REDCO projects are selected based on a cost-benefit analysis taking into account the level of private investment in a proposed project, the jobs to be created or retained, the impact on the tax base, the effect on essential neighborhood services and the stabilization of neighborhoods.[*] Major REDCO projects include:

- **Brooks Landing**: REDCO has provided a $1.5 million loan and $700,000 grant for this $10.6 million project to build an extended-stay hotel near the University of Rochester in the 19th Ward. REDCO worked to involve an out-of-state developer after no local developers could be attracted to the projects. The hotel is part of a larger vision to develop the waterfront on the Genesee River for restaurants, retail and office space, and a boat landing.
- **Upper Falls Shopping Center**: REDCO bought and developed an abandoned grocery plaza at North Clinton and Upper Falls Blvd. to ensure access for area residents to a grocery store, making a total investment of $3.9 million. The plaza is fully occupied today and has tenants ranging from H&R Block and Family Dollar to a Rochester Police substation and Clinton Family Health Center. REDCO intends to sell the plaza to a responsible owner and reinvest the proceeds in other projects.
- **Melles Griot**: To keep the optical manufacturer in town and help it expand, REDCO built the company a 30,000 square foot manufacturing building at the City-owned Rochester Science Park at South and Elmwood avenues. The company leases space from REDCO.
- **Business loans**: Recent major loans included $514,000 to Printing Methods Inc. to add 30 jobs as part of a $1.9 million expansion; $500,000 to the Gleason Corporation to retain 625 jobs as part of an $18.7 million expansion; and $323,000 to E.T. Precision Optics for equipment to create 20 new jobs as part of a $785,000 project.

[*] Much of the information on REDCO was provided through an interview with David Balestiere, REDCO's legal secretary, along with document reviews.

Monroe Newpower and Upstate Telecommunications Corporations

Monroe Newpower

The Monroe Newpower Corporation was established by Monroe County in 2002 to assume control of its Iola power plant and convert it from coal to natural gas. The LDC borrowed about $32 million through issuing bonds and purchased the plant from the county for $7 million. This allowed the county to reap $7 million for its budget in the year of the sale and to have the plant upgraded without issuing county debt. Yet the county did not privatize the plant in a traditional sense and thus become subject to the normal vagaries of buying power from the private market.

The LDC hired Siemens Building Technologies to manage the facility for an annual fee of about $1 million. Siemens provided one of two bids; the other came from Cinergy.[†]

The county purchases power from Monroe Newpower through a 32-year "take or pay" contract requiring the county to purchase power each year.

Monroe Newpower was late in paying property taxes, about $81,000 to the city of Rochester and $15,000 to the county, in 2004.[‡] Newpower's attorney said the organization had failed to budget for property taxes in its first year.

Newpower has since obtained property tax-exempt status through the County of Monroe

[†] Information about Monroe Newpower, Upstate Telecommunications and Civic Center Monroe County LDC was obtained through analysis of financial filings, supplemented by comments from Michael Townsend, attorney for the organizations, and information from county officials.

[‡] *Dems Seek Newpower Audit*, Sept. 13, 2004, Democrat and Chronicle.

Industrial Development Agency. It makes tax-like payments through a negotiated payment-in-lieu-of-tax or "PILOT" agreement.* In 2007, Newpower paid about $3,300 to the county and almost $56,000 to the City of Rochester. Typically such payments are less than the taxes that would have been paid without the negotiated agreement. CGR is not in a position to determine what the assessed value of the facility would be in the absence of the agreement, thus whether the PILOT payments are more or less than what the taxes would have been (as assessments on tax exempt properties are often unreliable). It is important to note, however, that had the LDC vehicle not been used and the Iola facility remained the property of Monroe County, there would be no payments at all. Any payments from Newpower to the City of Rochester are, therefore, higher than would have been received under county ownership. Alternatively, the county could have sold the property to a private owner who would likely have been responsible to pay the entire tax bill.

Upstate Telecommunications

Siemens also holds a contract with another Monroe County-created LDC, Upstate Telecommunications Corporation, formed in 2004 to take over and upgrade the county's telecommunications system.

Upstate Telecommunications assumed control of the county's phone and computer systems from existing companies that held leases and serviced the equipment. Siemens oversees the phone equipment and general management of the telecommunications upgrade, while IBM was chosen to oversee upgrades of the computer system. In addition, at least 16 other companies provide the equipment. Both Siemens and IBM were chosen through a request-for-proposals process that solicited other bids. Eighteen other companies responded to the request for proposals for the Siemens contract.†

Do They Save Money?

In both cases, the county made the case for the novel arrangements on the strength of expected taxpayer savings. Upstate Telecommunications is projected to save the county $20 million over 16 years, while the Newpower contract is intended to save $1 million a year in energy costs.‡ The county provided CGR with Siemens' analysis of the financial advantages of the new arrangement.

The analysis is based on comparing the cost of power under the new arrangement with what the county would likely have paid if it sold the plant and paid market prices for energy. The analysis does not consider other scenarios, including potential savings if the county had kept the plant and financed the repowering with county debt instead of forming the LDC.§

* City of Rochester, commercial assessment department.

† The other respondents were Rel Comm; Frontier Communications of Rochester; MAC Source, Inc.; ICS Telecom Inc.; Nicom Technologies, Inc.; Time Warner Telecom; Global Business Services; Ronco Communications; Landata Technologies; Data-Lease Inc.; WNY Computing Systems; Strategic Computer Solutions; Microtech Information Systems; Brite Computers; Tier Technologies; EntreComputer Services; Ciber Inc.; and Novell Inc., according to information provided by county officials.

‡ *County's Computer Upgrade Has Twist*, April 14, 2005, Democrat and Chronicle, and *County OKs Sale of Iola Coal Plant*, Dec. 24, 2002, Democrat and Chronicle.

§The issue at hand is not whether the county was right or wrong in its decision to replace old technology with new. The Iola Power Plant was very old and was coal fired. The new facility burns natural gas, a fuel that is much cleaner and, from an energy conversion perspective, more efficient. As coal is a much cheaper fuel, the raw cost of energy produced at the plant may or may not be cheaper after the

Rochester Renaissance Square Development

The Main and Clinton Local Development Corporation was formed to oversee the Renaissance Square project, a $230 million facility planned for downtown Rochester to include a new bus station, community college campus and performing arts center. If built, it would be the largest construction project in Rochester's history.

The project has been in the planning stages for several years and has taken different forms. Members of the local press and public have protested at various times that community leaders involved in planning the project have not provided enough information to the public about the finances, operations and decision-making process. Those complaints pre-date the formation of the Main and Clinton Local Development Corporation in 2004 to oversee the project.

The LDC board is composed of the Monroe County executive, Rochester mayor, Monroe Community College president, Rochester-Genesee Regional Transit Authority CEO and Greater Rochester Arts and Cultural Council president. The board opens its meetings to the public, and the LDC responds to requests for information from the press.

Some of the community's key questions about the project have yet to be answered, including the updated estimate of construction costs, and estimates of operating costs and any potential deficit. The community would not necessarily have more answers if government were directly overseeing the project rather than the LDC. But the use of an LDC can contribute to the secrecy surrounding such a project simply because LDCs operate in a low-profile environment compared to local governments, which are obligated to hold regularly scheduled open meetings that members of the public know about and are used to attending.

Civic Center Monroe County LDC

Monroe County created the Civic Center LDC in 2002 to take over ownership and management of the Civic Center garage in downtown Rochester. The garage needed repairs that the county couldn't afford. Ownership of the garage was transferred to the LDC. The LDC received $6.8 million from Mapco Parking in payment for the management contract, which gives Mapco the right to charge for parking. This sum was paid to the County by the LDC.

In effect, the County exchanged a stream of future revenue from parking fees for the "lump sum" payment received when the contract was signed.[*] The county received one other proposal to manage the garage from the Central Parking Corporation.

Mapco was expected to spend about $900,000 on repairs.[†] The company was paid $95,000 in 2004 for managing the garage, another element of the agreement.[‡]

plant was repowered with gas. The new facility also incorporates a cogeneration capability, however. The excess heat that is the byproduct of the power generation process is used to offset the heating costs of nearby buildings. A "combined heat and power" facility achieves the highest efficiency possible with the fuel employed.

[*] Selling income-earning assets is one example of what is called a "one-shot" in budget discussions—an action that plugs a hole in the current budget at the expense of future budgets.

[†] *County to Sell Parking Garage*, Aug. 20, 2003, Democrat and Chronicle.

[‡] 2004 Form 990.

The LDC did not budget for property taxes, assuming that the property would be tax exempt, and was delinquent in paying the first year. Mapco has since raised parking rates. The LDC subsequently obtained property tax-exempt status through the County of Monroe Industrial Development Agency. It now makes tax-like payments through a negotiated payment-in-lieu-of-tax or "PILOT" agreement.* In 2007, the LDC paid about $37,700 to the county and $170,700 to the city.

MUNIPRO INC.

The town of Greece formed Munipro in 1996 to allow the town to reap the benefits of a land donation by Eastman Kodak Co. Kodak had donated three parcels of land to the town as part of an agreement to lower Kodak's property assessment resulting in lower tax revenues to the town. The donation of land was intended to help offset the loss of tax revenues. The town created the LDC because towns are not permitted by law to hold leases that generate a profit. The town also decided to lease out space at its former Town Hall through Munipro.

The property owned by Munipro is valued at about $4.2 million. Munipro leases it to several different developers that lease portions of the property to tenants ranging from Courtyard Marriott to Ruby Tuesday restaurant to Pier 1 Imports. Munipro's proceeds from the leases are transferred to the town and amount to about $450,000 a year.†

GREECE ECONOMIC DEVELOPMENT PROJECTS INC.

The town of Greece created a second LDC in 2001 also to handle land formerly owned by Kodak. In this case the land was a vacant, 490-acre parcel near the Canal Ponds Business Park. While Kodak leaders had determined their most profitable course was to sell the land for residential development, the town wanted to preserve the land for industrial development. It was one of the last industrially zoned portions left in the town, and industrial development generates more tax revenue for municipalities than residential development does.

The LDC purchased the property from Kodak for a bargain-basement price of about $750,000 with Munipro guaranteeing payments based on its stream of revenue from leases. (The town created the second LDC because Munipro's bylaws only allowed it to lease, not sell, property.) The LDC listed the property for several years and acquired other property before selling a large parcel in 2006 for $4 million. The proceeds went to repay loans from Munipro, to the Infotonics technology center to fulfill a Kodak debt and to the town. The LDC still owns about 450 acres, has sold another parcel for $500,000 and has a purchase offer on a third parcel. The LDC's contracts with purchasers include a stipulation that the land is not to be used for residential development. To date there has been little development beyond the opening of a new BJ's Wholesale Club.

Both of the Greece LDCs have adopted new policies and practices in order to adhere to the state Public Authorities Accountability Act of 2005. Munipro, for example, has adopted policies on travel, ethics, whistleblowing, internal controls, disposal of assets, and purchasing. The purchasing policy requires the LDC to follow a

* City of Rochester, commercial assessment department.

† Along with document reviews, information on Munipro and Greece Economic Development Projects came from Jeff McCann, deputy supervisor for the town of Greece. McCann is current Munipro president and former president of Greece Economic Development Projects.

public competitive bidding process and use the lowest responsible bidder for all purchases over $5,000. The ethics policy bars board members from accepting gifts or favors with a value above $75 from suppliers, customers or others doing business with the LDC.

The board members of both Greece LDCs are appointed by the Town Board.

Ontario County Four Season LDC

Ontario County created the Four Seasons LDC in 1994 to promote year-round tourism and recreation in the county. The county provides annual funding, which was $626,000 for year ended 9/30/06, from the hotel occupancy tax. The organization has 7 staff members, 4 full-time and 3 part-time. The LDC's president and director is paid $70,000 a year.

The organization was initially formed as an LDC to participate in certain government funding programs but did not end up taking part. It now functions as a regular nonprofit corporation.[*] Major expenses listed on the organization's 990 tax form (for year ended 9/30/06) included $70,000 for advertising, $13,000 for advertising research, $13,000 for trade shows and an information center and $89,000 for brochures.

The tax form also showed the LDC had a $94,000 mortgage and a $32,000 car loan, in addition to a $25,000 loan for building improvements. The organization leases a Chevy Blazer used for business purposes, including delivering brochures, picking up/delivering items for events, taking materials to trade shows and the like.

[*] In addition to document reviews, information came from President Valerie Knoblauch.

Reporting on results on its web site, www.visitfingerlakes.com, the LDC says that tourism jobs rose by 1,000 between 1994 and 2000 and taxable food sales rose 25% and lodging sales rose 75% in inflation-adjusted dollars.[†]

Finger Lakes Regional Telecommunications Development Corporation

Ontario County established the LDC in 2005 to develop a high-speed telecommunications network to link existing institutions such as hospitals, clinics, schools and local government and to provide affordable and reliable high-speed access to the private sector. The project is expected to cost $7.5 million.

Funding comes from several sources, including a $1.5 million no-interest loan from the county. The county is also pre-paying for its use of the fiber optic network in the amount of $1 million. In addition, a company seeking to lay a gas pipeline through the county has agreed to help fund the project in exchange for a payment-in-lieu-of-taxes agreement from the county Industrial Development Agency. Empire Pipeline will pay $379,000 a year for 25 years toward the project, which the LDC is going to convert into $5.5 million to $6.5 million upfront through a revenue bond from a local bank. [‡]

The LDC used a request-for-proposals process and followed government procurement guidelines when awarding contracts to Syracuse Utilities for construction and ECC Technologies for design and engineering.

[†] Inflation adjustment calculated by CGR.

[‡] Information from documents and Ed Hemminger, CEO of the LDC.

The LDC is governed by a 9-person board, including four county officials (the county administrator and leaders from Economic Development, the Board of Supervisors and the Board of Cooperative Educational Services) and five community members elected by the board.

Genesee Gateway LDC

Genesee County formed the LDC in 2004 to promote economic development, specifically to develop and market "shovel-ready land" primed for construction. The county's Economic Development Center provided the LDC with $350,000 to support the development of "next generation" corporate parks. The LDC works closely with and is controlled by the Economic Development Center through its board membership.

The LDC over the past two years has acquired and developed over 95 acres of land in two corporate/industrial park sites. In 2005, it established the Gateway II Corporate Park in the town of Batavia, and in 2006 it acquired 68 acres of land for corporate park development in the Town of Pembroke. Wellsville Carpet Town, Inc. is the first occupant at Gateway II with the construction of a 75,000 square-foot assembly and distribution center for its Ashley Furniture Home Stores operation.

In both cases, the LDC acquired the land using a novel arrangement that allowed it to put very little or no cash into the deal. In each deal, the landowner created a limited liability corporation that acquired state tax credits by donating the land to the Economic Development Center. The center then transferred the land to the LDC. That transfer conveyed further tax credits to the landowner since the LDC is a nonprofit.[*]

The LDC has adopted policies governing procurement and the disposition of property. The procurement policy requires the LDC to accept the lowest, responsible bid for services, unless it is in the best interest of the LDC to accept another bid. In that case, the contracting officer must justify the decision in writing.

The property policy requires the LDC to publicly advertise and accept bids for property and to dispose of property for its fair market value, subject to some exceptions. The LDC may skip advertising if the property is worth less than $15,000 or if advertising would somehow adversely affect the market for such property. The LDC may also accept less than market value if doing so will further public health, safety, welfare or an economic development interest of the LDC's.

Hilton LDC

The village of Hilton founded its own LDC in 2000 to improve the village. The village has used the LDC to get involved in real-estate deals that it would otherwise be difficult to take part in and to exercise influence over development.[†]

- Main Street: Hilton was threatened with the loss of its anchor on Main Street when the Ben Franklin store appeared headed toward going out of business. The discount chain Dollar General wanted to buy the building for $250,000, but Hilton already had a Family

[*] Along with document reviews, information came from Susan Cook, chief financial officer to Genesee Gateway LDC.

[†] Information obtained from Hilton Mayor Larry Gursslin and Village Clerk-Treasurer Janet Surridge, along with documents.

Dollar store. The property owner offered to take $50,000 less for the property in order for the village to control how it was developed. The village authorized the LDC to purchase the building and subdivide the store. The LDC obtained a 20-year mortgage and raised some cash for the deal by selling a portion of the building to its current occupant, Summit Federal Credit Union. The Ben Franklin store remains and now pays rent to the LDC.

- Abandoned railroad property: The village wanted to develop the site of an abandoned railroad on the west side of Hilton into a light industrial park. The village bought the track and built a road, Old Hojack Lane, providing access. The land on either side of the railroad was owned by a resident, who agreed to sell to the LDC. The village lent the LDC $45,000 to make the purchase. The LDC plans to sell the land and use the proceeds to pay back the village.

What Risks do LDCs Pose?

Local development corporations vary in purpose, scope and behavior. It is difficult to generalize about them because they take many different forms and are used for many different purposes. The LDCs discussed above report laudable goals and appear to have been formed for a legitimate public purpose.

As our analysis draws to a close, we nonetheless ask the following questions.

- Has the creation or operation of local development corporations in the Rochester area in any way betrayed the public trust?
- Is the public record of LDC transactions complete?
- Irrespective of our findings regarding existing Rochester area LDCs, is there a potential for wrongdoing?

LDCs *can* operate in virtual secrecy, with few clear requirements to disclose information to interested members of the public. Many choose to act as though subject to open meetings laws, public bidding requirements and financial disclosure requirements. Yet our interviews demonstrate that legal opinions differ on the extent to which LDCs are *obligated* to conform to these requirements. This lack of clarity is itself problematic.

The lack of transparency makes it possible for LDCs to use the cloak of public purpose to benefit private persons and entities. While self dealing would be the most grievous offense, the lack of public scrutiny makes it possible for LDCs to confer favorable treatment—even if this favorable treatment is subtle and modest—on vendors, tenants, and agents of the LDC.

Example: Monroe Newpower Local Development Corporation

For purposes of discussion we will focus on Monroe Newpower LDC. CGR has no evidence of wrongdoing—indeed, no suspicions of wrongdoing—in connection with Monroe Newpower. Nonetheless, Monroe Newpower LDC illustrates the risk posed by the local development corporation vehicle in New York State.

Compliance with Transparency Provisions

Monroe Newpower's counsel states that it is a private corporation that is not substantially controlled by a public entity. Following the Buffalo Enterprise Development Corporation decision (see discussion beginning on page 4 above), the LDC would thus be exempt from the state's Freedom of Information (FOIL) and Open Meetings laws. Notwithstanding that position, Monroe Newpower indicates that it responds to information requests as though it were subject to the law. CGR is informed that Monroe County Executive Maggie Brooks has directed all county-created LDCs to comply with the reporting requirements of the Public Authorities Accountability Act, including submitting annual reports to the county Legislature and state Authority Budget Office.

However, meetings of the Newpower Board of Directors are not public. Moreover while CGR's questions about Newpower and other county-created LDCs were eventually answered, multiple requests were required in several cases. We are not optimistic that ordinary taxpayers without our knowledge or persistence would be successful.

As it is a nonprofit corporation that is affiliated with a public entity (even if not “substantially controlled” by same), Newpower is apparently not required to file a Form 990 with the Internal Revenue Service under IRS regulations, although it does so. But at least one of the county’s LDCs, Upstate Telecommunications, does not file those forms.

Appraisal of Assets

The Iola Power Station was transferred to Monroe Newpower in exchange for a payment of $7 million (according to press reports). The LDC listed $5.75 million in “goodwill” on its financial statements, which implies that the power plant itself was valued at $1.25 million and the LDC paid more because of the value conferred by its status as an existing power generation site and by the pre-existing physical connection to Monroe County and Community College facilities. County officials said Newpower presented the best deal of all the proposals received, but they did not provide details.

While this may be a difficult asset to value, considering the plant was functionally obsolete, to our knowledge the asset did not receive an arms-length appraisal before the transfer, which could leave doubt about whether the LDC paid an appropriate amount.

Competitive Bidding

Monroe Newpower did employ a competitive bidding process before awarding the contract to Siemens. Yet it did not have to do so. It would be perfectly legal to award the contract without such a process. The value of the contract is substantial; a firm such as Siemens would have a strong incentive to use every means at its disposal to secure such a contract, introducing the potential for wrongdoing, in the absence of transparency.

Financial Oversight

We believe that financial oversight is not adequate. As an example, Monroe County officials indicated that Monroe Newpower would save taxpayers $1 million a year in county energy costs. Yet to our knowledge there has been little feedback provided to the public about whether and how this happened. Certainly the county, fiscally distressed as it is, has every incentive to push for savings. And Newpower and the other county-created LDCs are submitting annual reports as noted above. But generally speaking, Newpower and other LDCs operate in relative obscurity without answering publicly to questions about their finances.

Remaining Questions

Because LDCs are not required to provide the same level of disclosure as governments, we are left with a series of questions about Monroe Newpower.

First, significant assets were transferred from the control of taxpayers to the control of a private entity. Are sufficient safeguards in place to ensure that these assets were transferred at an appropriate price?

Second, the LDC entered into an exclusive and long-term contract with the county after the transfer of the assets. Are sufficient safeguards in place to ensure that these contracts are appropriate?

Finally, if there is a problem with transparency—and we believe that there is—was there a compelling public purpose in using the LDC vehicle? Or could these transactions have been negotiated directly between the county and private vendors?

Conclusion

LDCs Can Be Beneficial

Local governments can use the local development corporation vehicle to play a bigger role in charting their communities' future. As the case studies illustrate, local governments can not only get directly involved in economic development efforts that benefit residents, they can also exercise influence, if not control over, how land is developed, promote tourism, generate revenue through creative financial structures and get assets off their books while maintaining control over what happens to them (essentially circumventing appropriate safeguards imposed on local government).

LDCs may be a vehicle for innovative public-private partnerships to accomplish initiatives great and small in the public's interest. As nonprofit organizations, they can attract donors looking for tax write-offs, and working with economic development agencies empowered to offer tax breaks, they can make deals happen that might otherwise be stymied by lack of funds or government regulation.

Risks Are Nonetheless Significant

Nonetheless, local development corporations pose significant risks. LDCs may operate almost entirely outside the view of the public. Without routine public disclosure, individuals who control these entities, both elected officials with appointment powers and board members, are not always fully accountable. As LDCs are not required in any systematic way to disclose information about their finances, operations and decisions, the potential for abuse and corruption is not insignificant. There is nothing to stop LDC officials from awarding contracts, jobs, property or other favors to friends, relatives or campaign contributors or from spending money wastefully and inappropriately.

Some LDCs were very forthcoming with information for this report, while others were relatively unhelpful. The ability to find out about LDCs should not depend upon the good graces of the organization's leadership. As noted above, Maggie Brooks has instructed Monroe County LDCs to comply with the Public Authorities Accountability Act, although the suggestion that the instruction is required points out that county believes that it is not obligated to comply in all cases in all dimensions. If this interpretation is correct, the next county executive (or County Executive Brooks) could rescind the directive.

LDCs are a special type of nonprofit conferred with unique benefits under the law. We believe that the public should be able to expect consistency and reliability in the information available about their activities.

Recommendations

The capability of LDCs to accomplish good on the public's behalf should be preserved. Yet their operations should be open to greater public scrutiny.

The application of the Public Authorities Accountability Act of 2005 to existing LDCs may be a matter for the courts, not the legislature, as some argue that the Act already applies to LDCs discussed in this report.

Specifically, we believe that LDCs should be required to:

- ❖ File IRS Form 990 tax returns as most nonprofits do. They should also be required to make their 990 forms and annual reports available to the public.
- ❖ Comply with open meetings and open records laws.
- ❖ Pay fair market value for property, and to dispose of property at fair market value, subject to special cases when it is in the public interest to exchange property for less than market value. The Genesee Gateway LDC's property policy could be used as a model, particularly in its provision requiring that an exception be explained and justified in writing.
- ❖ Solicit bids for work and make them public once a vendor has been chosen. LDCs should be required to accept the lowest responsive and responsible bid, with the usual exception for professional service contracts. Again, Genesee Gateway's procurement policy could be a potential model.
- ❖ The NYS Legislature should amend the Public Authorities Accountability Act to clarify its applicability to Local Development Corporations, a change which would cover several of the recommendations above.
- ❖ In the absence of action by the state, all local governments should declare that they are going to voluntarily comply with these reforms and this compliance should be monitored by the media and groups like the League of Women Voters.

APPENDIX: LDC SUMMARIES

Local Development Corporations in Rochester Area (group 1, table 1)
Sorted by Local Government Creator and by Assets Within Creator

Name of Organization	Year created	Creator	Exempt purpose	Organiz. type	Date of Financial Rpt (yr ended)	Total Assets-End of Year
Rochester Economic Development Corp.	1983	City of Rochester	Improve job opportunities for residents	501(c)(3)	9/30/06	$20,431,584
Genesee Gateway LDC	2004	Genesee County	Promote economic development in county	501(c)(3)	12/31/06	$4,115,203
Monroe County Development Corp.	2002	Monroe County	Provide loans to businesses, create/retain jobs	501(c)(3)	12/31/05	$624,102
Main & Clinton LDC	2004	Monroe County	To oversee the Renaissance Square project in downtown Rochester	501(c)(3)	12/31/06	$1,778,009
Civic Center MC LDC	2002	Monroe County	Own Civic Center public parking garage downtown	501(c)(3)	12/31/04	$6,990,556
Monroe Newpower Corp.	2002	Monroe County	Provide Monroe County and Monroe Community College with power	501(c)(3)	12/31/04	$33,755,076
Monroe Tobacco Asset Securitization Corp.	2000	Monroe County	Created to convert stream of future tobacco revenues into current dollars	*No Form 990 available*		
Upstate Telecommunications Corp.	2004	Monroe County	Use tax-exempt bonds to upgrade Monroe County hardware and software	*No Form 990 available*		

Local Development Corporations in Rochester Area (group 1, table 2)
Sorted by Local Government Creator and by Assets Within Creator

Name of Organization	Total Liabilities-End of Year	Bank or Bonded Debt	Total Revenue	Government Contributions (grants)	Total Expenses	Change in Net Assets for year reported	Unrestricted Net Assets or Fund Balance-End of Year
Rochester Economic Development Corp.	$5,712,100	$3,341,339	$2,949,602	$1,565,812	$796,224	$2,153,378	$8,720,518
Genesee Gateway LDC	$377,770	$333,960	$2,473,783	$1,104,749	$213,360	$2,260,423	$3,737,433
Monroe County Development Corp.	$0	$0	$607,107	$0	$105,132	$501,975	$624,102
Main & Clinton LDC	$1,778,009	$409,217	$3,237,324	$3,217,324	$3,237,324	$0	$0
Civic Center MC LDC	$6,847,735	$0	$865,520	$0	$722,699	$142,821	$142,821
Monroe Newpower Corp.	$33,721,589	$32,029,534	$6,776,374	$0	$7,026,873	($250,499)	$33,487
Monroe Tobacco Asset Securitization Corp.	*No Form 990 available*						
Upstate Telecommunications Corp.	*No Form 990 available*						

Local Development Corporations in Rochester Area (group 2, table 1)
Sorted by Local Government Creator and by Assets Within Creator

Name of Organization	Year created	Creator	Exempt purpose	Organiz. type	Date of Financial Rpt (yr ended)	Total Assets-End of Year
Ontario County Four Seasons LDC	1994	Ontario County	Promote tourism in Ontario County	501(c)(3)	9/30/06	$516,780
Finger Lakes Regional Telecommunications	2005	Ontario County	Develop fiber optic network for county	*No Form 990 available*		
Ontario Tobacco Asset Securitization Corp.	2004	Ontario County	Created to convert stream of future tobacco revenues into current dollars	*No Form 990 available*		
Greece Economic Development Projects	2001	Town of Greece	Economic development of industrial land	501(c)(3)	12/31/06	$4,747,905
Munipro Inc.	1996	Town of Greece	Lease real estate for town to generate revenue	501(c)(2)	12/31/06	$5,124,867
Penfield Economic Development Corp.	2004	Town of Penfield	Enhance economic climate of town	501(c)(6)	12/31/05	$3,837
Greater Brockport Development Corp.	2002	Village of Brockport	Improve village, economic development	No Form 990 available		
Hilton LDC	2000	Village of Hilton	Improve the village of Hilton	501(c)(3)	12/31/06	$383,723

Local Development Corporations in Rochester Area (group 2, table 2)
Sorted by Local Government Creator and by Assets Within Creator

Name of Organization	Total Liabilities-End of Year	Bank or Bonded Debt	Total Revenue	Government Contributions (grants)	Total Expenses	Change in Net Assets for year reported	Unrestricted Net Assets or Fund Balance-End of Year
Ontario County Four Seasons LDC	$294,832	$137,120	$681,553	$626,230	$661,341	$20,212	$197,867
Finger Lakes Regional Telecommunications	*No revenue in first fiscal yr; Form 990 to be filed for 2007*						
Ontario Tobacco Asset Securitization Corp.	*No Form 990 available*						
Greece Economic Development Projects	$1,298,231	$1,296,231	($1,270,587)	$0	$208,935	($1,479,522)	$452,265
Munipro Inc.	$0	$0	$503,575	$0	$334,692	$168,883	$974,867
Penfield Economic Development Corp.	$0	$0	$7,300	$0	$3,468	$3,832	$3,837
Greater Brockport Development Corp.	*No Form 990 available*						
Hilton LDC	$355,303	$273,524	$11,090	$0	$14,134	($3,044)	$28,420