

AUDIT REPORT

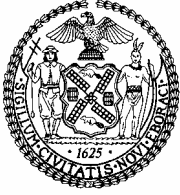


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Administration of The Department of City Planning Penn Center Subdistrict Fiduciary Account

FM05-113A

June 13, 2005



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, § 93, of the New York City Charter, my office has conducted an audit to determine whether the Department of City Planning (Department) accurately accounted for the revenues and expenses of the Penn Center Subdistrict fiduciary account, and ensured that all funds were used in accordance with the fiduciary agreement. The account was established to accept funds from applicants seeking approval from the Department to erect signs above a height of 40 feet within the Penn Center Subdistrict.

The results of our audit, which are presented in this report, have been discussed with Department officials and their comments have been considered in preparing this report.

Audits such as this provide a means of ensuring that City agencies have adequate controls over fiduciary accounts and that moneys in these accounts are used in accordance with applicable rules and regulations.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please contact my audit bureau at 212-669-3747 or e-mail us at audit@Comptroller.nyc.gov.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/gr

Report: FM05-113A
Filed: June 13, 2005

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*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

**Audit Report on the Administration of the Department of
City Planning Penn Center Subdistrict Fiduciary Account**

FM05-113A

AUDIT REPORT IN BRIEF

The audit determined whether the Department of City Planning (Department) accurately accounted for the revenues and expenses of the Penn Center Subdistrict fiduciary account and ensured that all funds were used in accordance with the fiduciary agreement.

Fiduciary accounts are used to record financial resources held and administered in trust by the City of New York. The principal and income of these accounts is intended to benefit individuals, private organizations, or other non-City government entities. Under the New York City Zoning Resolution §81-52 (Resolution), the Department is responsible for administering a fiduciary account established to receive contributions from applicants seeking approval to erect signs above a height of 40 feet within the Penn Center Subdistrict (Subdistrict). The fiduciary agreement and account was established in December 2001.

In accordance with the Resolution, the Department is the custodian of the account and is required to consult with the Commissioner of the Department of Transportation (DOT) in regards to the disbursement of funds to implement improvements within the Subdistrict. As of December 31, 2004, \$1,320,620 was on deposit in the Penn Center Subdistrict account.

Audit Findings and Conclusions

The Department accurately accounted for and deposited all funds it received into the fiduciary account. However, the Department did not ensure that all funds due from an applicant who erected signs in the Subdistrict were collected. As a result, the account was underfunded by a total of \$190,500.

In addition, since the inception of the account, the Department has not disbursed funds from the fiduciary account to make any Subdistrict improvements. Further, the Department has not consulted with DOT on making improvements in the Subdistrict, contrary to the Resolution and fiduciary agreement. According to research by a non-profit organization that monitored pedestrian accidents in the area, there is a clear need for improvements within the Subdistrict that will safeguard pedestrians and enhance traffic circulation in the area.

Audit Recommendations

To address these issues, we recommend that the Department:

- Ensure that applicants for constructing signage above a height of 40 feet remit required payments prior to approving applications.
- Utilize fiduciary account funds to develop and implement required improvement projects.
- Consult with DOT officials regarding improvement plans within the Subdistrict, as required by the fiduciary agreement.

INTRODUCTION

Background

Fiduciary accounts are used to record financial resources held and administered in trust by the City of New York. The principal and income of these accounts is intended to benefit individuals, private organizations, or other non-City government entities. The Comptroller's Office, in conjunction with the Office of Management and Budget (OMB) establishes fiduciary accounts at the request of various organizations, including City agencies and public benefit corporations.

At the request of the Department of City Planning (Department), a fiduciary agreement and account were established in December 2001 in accordance with New York City Zoning Resolution §81-52 (Resolution). Under the Resolution, applicants seeking approval from the Department to erect signs above a height of 40 feet within the Penn Center Subdistrict¹ (Subdistrict) must contribute funds to a fiduciary account. According to Department officials, the account funds are to be used for Subdistrict improvements that can include replacing and widening sidewalks, installing decorative lights, providing new taxi stands, and enhancing pedestrian circulation in subway and train stations. The Department is required to consult with the Commissioner of the Department of Transportation (DOT) on all improvements within the Subdistrict.

According to the Resolution and fiduciary agreement, the Department is the custodian of the account. As of December 31, 2004, \$1,320,620 was on deposit in the Penn Center Subdistrict account.

¹The Subdistrict extends from 31st Street to 34th Street along Seventh Avenue in Manhattan.

Objectives

Our audit objectives were to determine whether the Department:

- accurately accounted for the revenues and expenses of the fiduciary account; and
- ensured that all funds were used in accordance with the fiduciary agreement.

Scope and Methodology

The audit period covered July 21, 2001, to December 31, 2004.

We interviewed Department officials to obtain an understanding of the internal controls over receipts and disbursements of account funds. We evaluated internal controls to determine the timing and extent of audit tests, which were designed to determine whether revenues and expenses were properly recorded and whether funds were used in accordance with the fiduciary agreement.

To gain an understanding of the regulations for reporting and accounting of funds deposited in fiduciary accounts, we reviewed Comptroller's Directive 27, "Fiduciary Accounts Procedures for Requesting, Controlling and Monitoring." We also reviewed Zoning Resolution §81-52 as it relates to contributions to the fiduciary account. To determine the number of applicants seeking approval to erect signs within the Subdistrict, and the number of signs, and to verify the amount received in contributions, we reviewed all five applications received by the Department and related payment documents (i.e., copies of checks) and calculated amounts due based on the rates stipulated in the Resolution. To verify that we obtained all applications, we conducted an observation of the area on January 28, 2005, photographed signage erected on buildings within the Subdistrict, and verified that all signage was covered by the applications we received from the Department.

To determine whether any traffic safety studies have been performed of the Subdistrict area, we reviewed survey data, articles and maps on the website of an advocacy group, "Transportation Alternatives," and spoke with an official of that group to verify the source of data used in the surveys.² We also reviewed statistics gathered by the State Department of Transportation on pedestrian injuries within the Subdistrict. In addition, we made several requests to the City's Department of Transportation for statistics related to traffic patterns, accidents and pedestrian injuries within the Subdistrict, but our requests went unanswered.

To determine whether any requests have been made to use the fiduciary funds or recommendations have been submitted pertaining to improvements within the Subdistrict, we conducted telephone interviews with the Department of Transportation, Community Board No.

²Transportation Alternatives is a member-supported non-profit citizens group that conducts studies for better bicycling, walking and public transit, as well as reducing the number of cars.

5, and the 34th Street Partnership Business Improvement District, and documented our discussions in written memoranda.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter, which gives the Comptroller the right to audit.

Discussion of Audit Results

The matters covered in this report were discussed with Department officials during and at the conclusion of this audit. A preliminary draft report was sent to Department officials and discussed at an exit conference held on April 5, 2005. On April 6, 2005, we submitted a draft report to those officials with a request for comments. A written response was received on April 20, 2005. In their response, Department officials stated that they “have already instituted changes to . . . internal systems ensuring that all contributions of this type are made before an application can move forward through the review process . . . the Department expects to resume active discussions with the appropriate parties . . . to determine the best use of these funds consistent with the purposes for which the Account was established under the zoning resolution.”

The full text of the response from the Department is included as an addendum to this report.

FINDINGS

Account Not Properly Administered

The Department accurately accounted for and deposited all funds it received into the fiduciary account. However, the Department did not ensure that all funds due were collected. As a result, the account was underfunded by a total of \$190,500 from an applicant who erected signs at 421 Seventh Avenue without submitting the required payment. According to Zoning Resolution §81-52(b)(8), “No sign for which a certification has been received shall be installed prior to deposit of the sign contribution.”

Specifically, the \$190,500 was due from one applicant, who submitted two of the five applications received by the Department. On January 28, 2005, we observed that the signs indicated on the two applications had been installed at 421 Seventh Avenue. However, the applicant did not remit the required \$144,000 payment to the Department when the first application was submitted, on December 4, 2002. Another payment of \$46,500 was not remitted to the Department when the second application was submitted, on May 5, 2004. On February 2, 2005, we met with Department officials to apprise them of the account shortfall and request that they investigate the matter. In the absence of a timely response, we formally notified the Department about the missing funds in a letter dated February 18, 2005. Department officials responded on March 2, 2005, stating that:

“We determined that . . . the applicant for the two certifications . . . had not made the required contributions. We contacted [the applicant], and requested that required payments be made immediately. On February 14, one week after being contacted the required payments of \$190,500 were made and the Department deposited these funds into the Penn Center Subdistrict Trust and Agency Account.”

Clearly, the Department’s acknowledgement of this oversight indicates that it must be more vigilant in ensuring that all applicants for signage in the Subdistrict make the appropriate payments to the fiduciary account.

Funds Not Used In Accordance With Fiduciary Agreement

Since the inception of the account, the Department has not disbursed funds from the fiduciary account to make the required Subdistrict improvements. According to Comptroller’s Directive 27, “Agencies must further ensure that the purpose for which the resources in the account were provided is being fulfilled...” Moreover, the Department has not consulted with the Department of Transportation, as required by the Zoning Resolution and fiduciary agreement, on matters pertaining to making the improvements. We requested documentation from Department officials to indicate whether consultations were conducted between the Department and DOT. However, Department officials have not provided any formal documentation that would indicate such efforts were made.

The area comprising the Subdistrict would clearly benefit from the types of improvements stipulated in the fiduciary agreement. Research conducted by “Transportation Alternatives,” regarding pedestrian accidents occurring between 1995 and 2001 ranks the 34th Street and Seventh Avenue intersection second on a list of the “10 Most Dangerous Locations for Manhattan Pedestrians.” The same research also indicates that 33rd, 32nd, and 31st Streets along Seventh Avenue, respectively, have been the sites of numerous pedestrian injuries. Clearly, there is a need for improvements within the Subdistrict that will safeguard pedestrians and enhance traffic circulation in the area.

After receiving the preliminary draft report, an official presented us with a synopsis of the Department’s purported consultations with DOT, MTA, the 34th Street Partnership, and the Municipal Arts Society regarding proposed improvements within the Subdistrict. However, the synopsis did not indicate dates meetings were held and projects discussed. In addition, Department officials did not provide any documentation of the efforts discussed in the synopsis. For example, the synopsis stated that the Department solicited ideas for projects from DOT and the MTA. However, copies of the solicitations were not provided. Furthermore, the synopsis stated that nine suggestions for improvements were received from the 34th Street Partnership. However, as with the solicitations, copies of the suggestions received were not provided.

RECOMMENDATIONS

The Department should:

1. Ensure that applicants for constructing signage above a height of 40 feet remit required payments prior to approving applications.

Department's Response: "The Department has examined the circumstances surrounding the situation in which two sign applications were certified and approved without us having received the required contributions. As a result the Department has instituted a revised review and sign off system to ensure that applications which require contributions into the account will not be certified until all funds have been received."

2. Use fiduciary account funds to develop and implement required improvement projects.

Department's Response: The audit "concludes that there are traffic safety issues in this area and that funds in the Account . . . should be spent on traffic safety related traffic improvements. It is important to note, however, that the use of the funds is not limited to traffic safety improvements but can be spent on a wide range of projects including streetscape amenities and subway and train station improvements." A Department official also stated that "at this point, I am pleased to note that we are about to initiate new discussions with the MTA and DOT regarding the use of the funds."

Auditor Comment: The Department's assertion that the audit "concludes" that fiduciary account funds "should" be spent on traffic safety related improvements is incorrect. While it may be prudent to use account funds on public safety rather than "area beautification" (streetscape projects), we recognize that it is the Department's prerogative to spend these funds as it sees fit after consultation with the appropriate entities. In any case, we are pleased that the Department will shortly be discussing this matter with MTA and DOT officials and, we assume, making appropriate decisions on how these funds will be used.

3. Consult with DOT officials regarding improvement plans within the Subdistrict, as required by the fiduciary agreement.

Department's Response: "The Report recommends that we consult with DOT regarding improvement plans in the Subdistrict and seems to conclude that no such discussions have taken place. At your staff's request, we provided the names and telephone numbers of our contacts at DOT as well as the MTA and the local BID with whom we have had discussions. . . . We are confident that these individuals would have reported that there have been discussions with DCP over the use of the funds and confirmed the narrative description and chronology of events supplied to you by our staff."

Auditor Comment: Despite numerous calls to DOT's Director of Audit Coordination, we were unable to confirm whether the Department and DOT effectively coordinated efforts to develop and implement projects within the Subdistrict as required by the fiduciary agreement. Obviously, even if such conversations occurred, no action was taken to make use of the available funds. Nevertheless, we are pleased that the Department will now take the steps necessary to use these funds.



DEPARTMENT OF CITY PLANNING
CITY OF NEW YORK

Amanda M. Burden, AICP, *Director*
Department of City Planning

OPERATIONS

April 20, 2005

Greg Brooks
Deputy Comptroller
Policy, Audits, Accountancy & Contracts
1 Centre Street
New York, N.Y. 10007-2341

Dear Mr. Brooks:

On behalf of Amanda Burden, Director of the Department of City Planning, I would like to thank you for the opportunity to respond to the Draft Audit Report issued by your office regarding the Penn Center Subdistrict Trust and Agency Account (the Account). The report has been reviewed by Departmental staff and the following is our response to the audit findings and recommendations.

As discussed with your staff, the Department has examined the circumstances surrounding the situation in which two sign applications were certified and approved without us having received the required contributions. As a result, The Department has instituted a revised review and sign off system to ensure that applications which require contributions into the Account will not be certified until all funds have been received.

The Audit Report discusses how your office looked at the WEB site of a transportation advocacy group and subsequently spoke with them to determine whether any traffic safety studies had been performed in the Subdistrict area. The audit then concludes that there are traffic safety issues in this area and that funds in the Account money should be spent on safety related traffic improvements. It is important to note, however, that the use of the funds is not limited to traffic safety improvements but can be spent on a wide range of projects including streetscape amenities and subway and train station improvements. As noted to your staff, our discussions with DOT and the MTA focused in large part in trying to determine the best use of the funds, given the range of possible uses and taking into account the limited amounts available. We reported that that there was a hiatus in our discussions with DOT and the MTA regarding the use of the funds

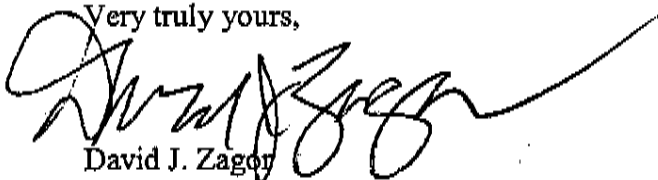
Greg Brooks
April 20, 2005
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during a period in which we examined the desirability of continuing, modifying or repealing the Subdistrict regulations, and the possibility of refunding contributions which had been made in advance of sign regulations. At this point, I am pleased to note that we are about to initiate new discussions with the MTA and DOT regarding the use of the funds.

Finally, the Report recommends that we consult with DOT regarding improvement plans in the Subdistrict and seems to conclude that no such discussions have taken place. At your staff's request, we provided the names and telephone numbers of our contacts at DOT as well as at the MTA and the local BID with whom we have had discussions. The individual we named at the MTA informed us that he never spoke with your staff. In addition, it appears that your staff was asked by the DOT contact to provide a written request for information, but that this was not done. We are confident that these individuals would have reported that there have been discussions with DCP over the use of the funds and confirmed the narrative description and chronology of events supplied to you by our staff.

In summary, we have already instituted changes to our internal systems ensuring that all contributions of this type are made before an application can move forward through the review process. Finally, the Department expects to resume active discussions with the appropriate parties, including DOT and the MTA, to determine the best use of these funds consistent with the purposes for which the Account was established under the Zoning Resolution.

Very truly yours,



David J. Zagor

c: Amanda M. Burden
David Karnovsky
Richard Barth
Susan Kupferman, Office of Operations
Michael M. Morgese, Comptroller's Office