



The Commonwealth of Massachusetts
Office of the Inspector General

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November 27, 2006

Mr. Nicholas Costello
Chairman of the Board
Alliance for Amesbury
5 Market Square
Amesbury, MA 01913

Dear Mr. Costello:

This letter responds to your request that the Office of the Inspector General revisit its July 13, 2006 findings concerning the Alliance for Amesbury's involvement in the so-called TerraSphere project. The office presented these findings by letter to the Mayor of Amesbury.

To clarify, this office directed its letter to city procurement practices. This office only addressed the Alliance because of the Alliance's role in developing the TerraSphere plan and the city's proposed reimbursement of the Alliance's expenses.

Based on your recent provision of additional information and documents, previously not provided, this office agreed to conduct a new review of the findings concerning the Alliance. This office points out that we have not audited the records of the Alliance nor do we have plans to do so. This office has accepted these provided documents with the assurance of the Alliance and its outside legal counsel that these documents are true and accurate.

By letter of July 31, 2006 to this office, you stated your wish for the Alliance to "be exonerated from any suggestion of impropriety" and appeared concerned that this office has "misconstrued and distorted" the Alliance's "motives and objectives in the TerraSphere Plan" including the following:

- 1) The Alliance's accounting for its TerraSphere expenses and whether this is indicative of any wrongdoing or fraud;
- 2) The source and uses of the \$80,000 in costs incurred by the Alliance for the project;

- 3) City's obligation and ability to reimburse the Alliance for the \$80,000 in incurred costs; and
- 4) City officials sitting on the Alliance board.

Based on the new information provided by the Alliance this office concludes the following:

- *Financial Wrongdoing:* All TerraSphere project expenses reported by the Alliance can be tracked and documents indicate that, in fact, this money had been spent by the Alliance. Therefore there does not appear to be fraud or wrongdoing involved in the Alliance's use of \$80,000 as the total for incurred project expenses. It also does not appear that the Alliance benefited financially from its involvement in the development of the TerraSphere plan.
- *Sources and Uses of Funds:* The provided documents also indicate that the Alliance did not use city funds for any of the expenses incurred for the TerraSphere project. The Alliance used a "special projects" fund that its members contribute to along with a state loan to pay for TerraSphere expenses. As a result, the city did not use the Alliance as a conduit for funds for this project. The former annual city appropriation to the Alliance had been used for operating expenses including the provision of services for the city that, according to Mr. Costello, had been formerly provided by city employees. The legality of this city appropriation remains an issue, but for the city, not for the Alliance. This office believes that this arrangement violated state public procurement law. A recent opinion from the Department of Revenue (attached) goes further by stating: "We do not think such payment could be made as a grant, simply to support the activities of the Alliance, or to reimburse it for activities that may have benefited the town, but were not performed under any contract with the town. The so called Anti-Aid Amendment to the state constitution prohibits grants to non-profit entities unless they are under the exclusive control of public officers or agents."
- *City Officials Sitting on the Board:* Documents also indicate that city officials did not vote while attending Alliance board meetings, but officials did participate in discussions. Recent changes to the Alliance by-laws have clarified that city officials are non-voting board members. However, this office has been informed by city officials that the Ethics Commission has been asked to render an opinion on this issue.

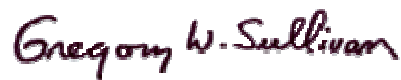
Concerning the Alliance's request for reimbursement, this office has no reason to alter the finding. Although seemingly well-intentioned, the Alliance cannot expect reimbursement for the TerraSphere expenses from the city when no contract exists and when the city failed to use a procurement process to secure the study and disregarded municipal finance law. The city may accept that study as a gift if given as such. However, in this case, the Alliance study appears to have been given to the city with an expectation of reimbursement. The city will be violating municipal finance and procurement law if this reimbursement is provided. The recent opinion by the Department of Revenue cited above supports this conclusion. City officials apparently committed errors by promising the Alliance reimbursement and by choosing the TerraSphere developer as the mechanism for this reimbursement.

Counsel for the Alliance has stated that the city may still be responsible for paying all or a portion of a \$25,000 loan from MassDevelopment for the TerraSphere project. However, according to the loan documents, the Alliance and not the city is the recipient of this loan. As such, the city does not appear to have any obligation to repay this loan for the Alliance.

Regarding the possible ethics issue that arises from municipal officials sitting on the Alliance board while advocating for the Alliance before municipal boards and committees, this office will await the pending decision from the Ethics Commission before deciding whether to comment further.

Thank you for your cooperation and for your provision of documents. I hope this satisfies your concerns. We consider this matter closed.

Sincerely,



Gregory W. Sullivan
Inspector General

Attachment

cc: Ray Shockey, Executive Director, Alliance for Amesbury
Mayor Thatcher Kezer III
Christopher Lawrence, President, Municipal Council
Laurie Knapp, Alliance for Amesbury
Tom Dwyer, Dwyer & Collora