

State of New York  
Office of the Inspector General



Investigation of the Sale of State Land  
to the Indian Cultural and Community Center Inc.

September 2013

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Inspector General

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## **EXECUTIVE SUMMARY**

The Inspector General investigated the statutorily-mandated 2008 sale of New York State property in Queens to the Indian Cultural and Community Center Inc. (ICCC) and the ICCC's proposed development of that property. Specifically, the investigation examined conduct spanning from 2006-2010 regarding the difference between the purchase price for a parcel of land on the Creedmoor Psychiatric Center campus and its City-assessed value, as well as the ICCC's newly-announced plans to build two nine-story apartment towers and its attempts to purchase additional land.

The Inspector General's investigation found that the purchase price for the land sold to the ICCC was valid and reasonable. The Inspector General also found, that while there were seemingly wide disparities in the results of the appraisal performed for the state and the assessment performed by the New York City Department of Finance, this disparity in appraisal value was reconcilable if such factors as environmental issues and limitations on the use of land had been uniformly considered in both processes.

The Inspector General found, however, that the ICCC exploited loopholes in the statute and lapses in oversight by the Dormitory Authority of the State of New York, which was tasked with overseeing the transaction. Specifically, while the Legislature had expressed its intent that the state sell land on the Creedmoor Psychiatric Center campus to the ICCC for use as a community center, it did so only within language adjunct to the 2006 statute directing the sale, and failed to express its intent in the statute itself. The ICCC exploited this omission during the process of negotiating transaction terms with the Dormitory Authority by disingenuously convincing Authority staff that the Legislature did not intend to restrict the ICCC's use. Unaware of the legislative history, and failing to inquire about it, Dormitory Authority staff acceded to an ICCC request to include a clause in the deed allowing the ICCC to have a purchase option to remove a restriction that the land only be developed for use as a community center. That clause, which was contrary to legislative intent, would permit the ICCC to develop senior residential housing. The clause was inserted without notice to Dormitory Authority staff responsible for environmental review or notice to the firms who had appraised the property earlier. In 2011, the ICCC expressed its intent to build two nine-story residential towers on the purchased land, leading to community opposition.

During investigation of the land sale, the Inspector General learned that the ICCC made questionable representations to persons from whom it solicited and collected funds through a financing mechanism known as "subvention." The Inspector General is referring to the Office of the New York State Attorney General the findings contained in this report.

## **INTRODUCTION AND BACKGROUND**

The Creedmoor Psychiatric Center, in eastern Queens, New York, was established in the early 1900s. The New York State Office of Mental Health (OMH) now operates most of the facilities on the Creedmoor campus.

In or about 1997, OMH announced plans to sell portions of the property. New York State land may be sold via mechanisms provided in a number of statutes. Such statutes set forth the agency or agencies permitted to sell the land; who may purchase the land; and the conditions under which the land may be sold. New York State land can also be sold through special legislation that specifies unique terms and conditions.

### **THE INSPECTOR GENERAL’S INVESTIGATION FOUND THAT THE ICCC EXPLOITED STATUTORY LOOPHOLES AND DEFICIENCIES IN THE DORMITORY AUTHORITY’S SHEPHERDING OF THE CREEDMOOR LAND SALE PROCESS**

#### **The 1999 Proposal to Establish an Indian-American Community Center**

On or about January 12, 1999, a proposal from members of the American Diocese of the Indian Orthodox Church was presented to, among others, then-Assemblyman Mark Weprin, whose district included the Creedmoor campus, for “the establishment of a community center for the various needs of the growing Indian-American community.”<sup>1</sup> The 12-page document, drafted and presented by Koshy Thomas and others from the Church who ultimately became leaders in the ICCC,<sup>2</sup> described the Queens-based Indian-American community’s “need to provide a suitable facility to meet their cultural and community needs.” The proposal described the community’s history and tradition, as well as the plans for the center. According to the proposal, services to be provided would include a senior citizen center comprised of “three rooms with a total area of 600 sq. feet . . .” Seniors would be “allowed use of the game room, prayer hall, living room, and dining room.” Other proposed services included student services, for which “800 sq. feet of classroom space [and] 200 sq. feet of office space [and] outdoor playgrounds” were allotted; a “women’s forum headquarters” (750 square feet); “Medical Assistance & Awareness Center” (1,200 square feet); “Substance Abuse Prevention, and Awareness” programs, which “will be provided with an office space not exceeding 150 sq. feet”; a day care center and school for 20 children requiring approximately 1,200 square feet of space; an assembly hall and cafeteria requiring 12,000 square feet of space; and a playground and

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<sup>1</sup> According to documents provided by the ICCC in response to the Inspector General’s subpoena, the ICCC presented the proposal to Queens Borough President Claire Shulman. Assemblyman Weprin also received a copy and provided it to the Inspector General.

<sup>2</sup> The proposal was presented by Koshy Thomas (later to become the ICCC Vice President). The Project Review Committee included Saju Varghese, Eapen Chacko, Emil Kuriakose, George David, and Sanu Thomas (Koshy Thomas’s son, who himself became involved with the ICCC’s efforts to promote its proposals).

backyard area requiring approximately 7,500 square feet of space. No mention was made in the proposal of any senior housing.

In June 1999, the Queens Borough President at the time, Claire Shulman, published a “Creedmoor Master Plan” to address community groups’ expressed “desire to ensure that any future development of Creedmoor remain compatible and not detract from the existing tranquility and beauty of the Creedmoor campus nor destabilize surrounding residential areas, as well as continue to serve community needs.” The Master Plan described the “two-story, single-family” housing predominant in the area of the Campus. It also referred to a 1995 analysis on behalf of the Empire State Development Corporation that noted the demand for “congregate care facilities for senior citizens in Queens” and the Creedmoor property’s “locational advantages” as a “favorable site for possible new development.” The Master Plan established guidelines for development, including to “[p]reserve Creedmoor’s campus-like setting of open space and greenery” and “[r]equire new construction to conform in scale, architecture, density, and use with the surrounding community.” The Master Plan envisioned “[p]ossible development scenarios includ[ing] single- or two-family residences, detached or semi-detached; and garden apartments.” The final, “Implementation,” section of the document stressed that, for the entire campus, “[t]he proposed plan will be in character with the low-density, predominantly residential character of surrounding neighborhoods. It encourages opportunities for use by local community organizations . . . .” The report listed “expressions of interest from prospective users including the New York City Department of Sanitation and Board of Education and constituent groups seeking to use part of the campus for a campground and/or outdoor theater. Among the many religious groups seeking to use the campus, the Malankara Orthodox Syrian Church was listed as having proposed to use the campus for an “Indian community center.”

### **The 2001 Proposed Creedmoor Land Sale Legislation**

In 2001, special legislation was introduced in both the Senate and the Assembly seeking to authorize the sale of land on the Creedmoor campus to the Malankara Syrian Orthodox Church.<sup>3</sup> The bill was sponsored by then-Assemblyman Weprin and then-Senator Frank Padavan, whose district also included Creedmoor.

A Memorandum in Support of Legislation noted the “JUSTIFICATION” for the sale:

In an effort to address the needs of the growing Indian community, many of which who [sic] reside near Creedmoor property, this legislation would allow for an Indian-American Community Center to be established on a portion of Creedmoor property.

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<sup>3</sup> S. 1793 / A. 3145 (2001).

The actual legislation did not mention or allude to the establishment of a community center, but merely directed the Dormitory Authority to sell or lease certain land, as described by its boundaries, to the Church. The legislation authorized the Dormitory Authority

to fix and determine the terms and conditions of the conveyance or lease including the monetary consideration or rent payable to the state; provided, however, that the people of the state of New York shall retain a reversionary interest in the subject property should such property cease to be used by the Malankara Orthodox Syrian Church for its lawful purposes; and provided further that such conveyance or lease shall take place within one year of the effective date of this act.

In or about October 2001, then-Governor George Pataki vetoed the bill because the land identified was still being used by OMH. Nevertheless, the Governor noted in his veto message that he “fully endorse[d]” the legislative goal of “establish[ing] a community center” and directed OMH “to identify another parcel at Creedmoor that would be suitable for [such] use . . . .” to sell at “fair market value.”

On November 6, 2001, a proposal similar to that presented in January 1999 was again presented to, among others, Assemblyman Weprin, for an Indian American Community Center.<sup>4</sup> The proposal outlined three phases that included many aspects from the 1999 proposal. “Phase I” included plans for a “Substance Awareness and prevention Center”; “Youth Programs”; “Medical Assistance & Awareness Center”; “Senior citizens Center” [sic]; “Women’s Forum”; and “Community Hall/Cultural Center.” The proposal for Phase II included plans for “Administrative Office & Chapel”; “Guest Quarters” consisting of “four units of garden apartments” totaling 5,000 square feet; and a “Day Care Center.” The proposal for Phase III included plans for a “Nursery & Primary School” requiring 20,000 square feet of space and an “Assisted living for Senior Citizens” requiring approximately 10,000 square feet of space – a relatively small area and in no way representative of the two nine-story apartment towers proposal presented in 2011 by the ICCC.

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<sup>4</sup> The proposal’s cover referred only to a “Community Center,” but the first substantive page referred to “Indian-American Community Center and Orthodox Church Headquarters.” The proposal document does not identify its authors, but states that it was “presented on behalf of His Grace Mathews Mar Barnabas” (later identified in ICCC correspondence as the “Patron” of the ICCC).

## **Preparations to Sell Land**

As a result of the 2001 veto message, OMH and the Dormitory Authority began to examine areas of the Creedmoor campus no longer needed by OMH or other agencies that would accommodate plans for a community center. In or about 2002, a site in the southeastern corner of the campus was chosen for further examination.

In July 2002, the ICCC was incorporated by the Malankara Church as a corporate entity to, among other things, purchase land from New York State on which it could develop a community center.<sup>5</sup> The sole member of the ICCC is the Church. The ICCC's Articles of Incorporation specifically noted that one of the purposes for which the corporation was formed was to establish a community center. No mention was made in the corporate documents about developing senior housing.

Over approximately the next three years, attempts were made to sell land on the Creedmoor campus to the ICCC using a statutory mechanism involving the Empire State Development Corporation. When those efforts failed, Senator Padavan's office commenced efforts to introduce special legislation authorizing the sale of the land via the Dormitory Authority.

## **The 2006 Creedmoor Land Sale Legislation**

Legislation authorizing the sale of Creedmoor land to the ICCC was introduced in 2006, again by Senator Padavan and Assemblyman Weprin.<sup>6</sup> Padavan testified to the Inspector General that representatives of the ICCC, in conversations with him, only proposed building a community center, and never discussed building senior housing on the Creedmoor campus. Similarly, Assemblyman Weprin testified to the Inspector General that the ICCC had only informed him of its interest in building a community center; he heard nothing about proposals for senior housing until years after the passage of the 2006 statute.

The 2006 legislation re-asserted the limited justification given for the 2001 legislation, namely the establishment of "an Indian-American Community Center." Similarly, the Bill Jacket's "Arguments In Support" section noted that the sale mechanism would "provide a constituency with space it deems suitable to construct a community center on surplus

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<sup>5</sup> The ICCC incorporation was initiated by the American Diocese of the Malankara (Indian Orthodox) Church. According to documents submitted by the ICCC in response to a subpoena issued by the Inspector General, the American Diocese transferred the membership to the St. Gregorios Malankara Orthodox Church of Queens effective September 1, 2007.

<sup>6</sup> S. 8453 / A. 12034 (2006). An initial attempt in 2006 to authorize the sale of property to the ICCC, codified at Part L of Ch. 57 of Laws of 2006, was deemed unconstitutional for procedural reasons, namely that the bill had been introduced as part of a budget bill, and not as a stand-alone bill.

[Creedmoor] property . . . .” The legislation itself, however, did not include any limitation on the land’s use. The legislation, which was drafted by the nonpartisan Legislative Bill Drafting Commission, authorized the Dormitory Authority to sell two parcels of land that were described by their boundaries, and to:

fix and determine the terms and conditions of each conveyance, provided, however, that each sales price shall be not less than the fair market value of each parcel, as determined by two or more independent appraisals. Each conveyance shall take place within one year from the effective date of this act . . . .

Ultimately, the legislation authorizing sale of land on the Creedmoor campus to the ICCC via the Dormitory Authority was passed by the Senate and Assembly and was signed by Governor Pataki on July 9, 2006.

### **State Environmental Quality Review Act (SEQRA)**

Pursuant to the State Environmental Quality Review Act (SEQRA), the Dormitory Authority, as lead agency, completed an environmental review of the proposed action of selling the Creedmoor land to the ICCC “for the construction of a community center.” The Dormitory Authority reviewed submissions and based its analysis of documents submitted by the ICCC and representations made by its representatives.

Matthew Stanley, a Senior Environmental Manager at the Dormitory Authority, conducted an initial site visit by himself, and contacted Koshy Thomas from the ICCC to schedule a site visit with ICCC representatives. According to Stanley’s testimony, prior to that site visit, he discussed the project with Thomas, who described it as “a community center for members of his organization as well as the community at large.” Thomas explained to Stanley that the members of the ICCC needed a facility to “call their own” and frequently rented out other churches or held events in members’ homes.

The Dormitory Authority retained the firm Edwards and Kelcey<sup>7</sup> to analyze the ICCC project and to prepare necessary environmental documentation. On January 17, 2007, Toby Kizner of Edwards and Kelcey and Matthew Stanley of the Dormitory Authority met with Koshy Thomas, Kuriakose (George) Varkey, and Sanu Thomas at the site. Kizner testified to the Inspector General that at the meeting and in subsequent telephone conversations that year, the ICCC representatives only described the development of a community center that would involve day and evening activities; no residential component was described. ICCC representatives informed Kizner that the building would be 15,000 square feet in area and would involve 100

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<sup>7</sup> Edwards and Kelcey is now owned by Jacobs Engineering Group, Inc.

parking spaces. No mention was made of any assisted living for senior citizens. Stanley, in turn, provided the ICCC's proposal to Kizner for use in preparing the necessary documents. That proposal reflected a schematic drawing of a one-story building.

On February 15, 2007, based upon the meeting and conversations with ICCC representatives, Edwards and Kelcey prepared an Environmental Assessment Form (EAF) and accompanying technical data sheet. The EAF, in its description of the proposed action and proposed project, noted that sale to the ICCC was "for the construction of a community center."

Kizner testified to the Inspector General that her firm's analysis would have changed if ICCC representatives had informed her that the ICCC intended to develop two nine-story residential buildings on the Creedmoor site. Kizner noted that zoning compliance is part of the firm's analysis, and that her team would have analyzed whether the proposed use conformed to the zoning designation of the site. Additionally, traffic analysis data would have been different for a residence because the types of activities, times of day the site would be accessed, and the number of people accessing the site would be different. Finally, Kizner noted that a residential building has different impacts on police and other emergency services providers.

On June 6, 2007, based upon the representations made to it about the construction of a community center, the Dormitory Authority issued a State Environmental Quality Review Negative Declaration and Notice of Determination of Nonsignificance pursuant to implementing regulations of the Environmental Conservation Law. In its Notice, the Dormitory Authority stated that it "ha[d] determined that the proposed action [selling the land to the ICCC] will not have a significant adverse effect on the environment and a Draft Environmental Impact Statement will not be prepared."

### **Extension of Time to Close Transaction**

In early June 2007, with the July 7 statutory deadline for closing the land sale looming, the ICCC lacked sufficient funds to purchase the property. The ICCC therefore sought a statutory extension of the time to close the transaction to July 1, 2008, within which it could complete the purchase of land from the Dormitory Authority. A legislative extension of the time permitted to close the Creedmoor land sale was sought so that the ICCC could pursue alternative funding sources. The statute extending the time to close the transaction was signed by Governor Eliot Spitzer on July 9, 2007.

### **Creedmoor Land Purchase Price**

The Office of Real Property Services within the Dormitory Authority was tasked with setting a purchase price based upon two appraisals, as required by that statute. One appraisal was performed by Daniel P. Lane of Daniel P. Lane & Associates, a firm hired by the Dormitory

Authority. The other appraisal was performed by Howard Jackson of Integrated Real Estate Services, which was hired by the ICCC subject to Dormitory Authority approval.

### *The Lane Appraisal*

On December 21, 2006, Daniel P. Lane & Associates, Inc., submitted a “limited, restricted appraisal report indicating the fee simple [unrestricted] interest in the appraised property . . . for acquisition purposes.”<sup>8</sup> Lane’s report indicated that it followed a “Sales Comparison Approach,” based upon an inspection of the property and market data. Lane testified to the Inspector General that, as part of his analysis, he also reviewed the report on soil conditions prepared by an environmental consultant in 2002 and 2003.

Lane’s report included two maps, one of which showed the general location of the property, and the other, a tax map, which reflected the borders of the two parcels in question. Several photographs depicted the property. Lane included an “area overview” and discussed consumer spending; construction and real estate; other business activity; and financial developments, concluding that “[t]he trend for the New York area appears to be upward.” Lane discussed a number of Queens issues, including its transportation issues; economy; health and safety; education; and culture, recreation, and tourism. Lane noted that the zoning for the parcels was commercial.

Based upon these criteria, Lane concluded that the highest and best use<sup>9</sup> of the property would be as a community center. Based upon a comparison of other sales and analyzing such factors as size, the odd configuration of the land, and difficult access, Lane appraised the land at a unit value of \$15.00 per square foot, or \$2.9 million<sup>10</sup> when rounded.

Lane testified that the Dormitory Authority had directed him to appraise the market value of the land without restrictions. The Dormitory Authority planned to apply a 20 percent discount for not-for-profit use to Lane’s proposed market price. However, when Dormitory Authority Director of Real Property Services Joseph Durkin learned of this proposed discount, he determined that a more appropriate basis for a 20 percent reduction in the market price would be to place a use restriction in the deed restricting the use of the property to a two-story community center. Durkin testified to the Inspector General that the inclusion of this use restriction was based on the ICCC’s representation that it intended to build a community center on the property

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<sup>8</sup> According to the testimony of Dormitory Authority Director of Real Property Services Joseph Durkin, the December 2006 appraisal that served as a partial basis for the purchase price was an update of an earlier appraisal.

<sup>9</sup> Lane used the Dictionary of Real Estate Appraisal definition of “highest and best use”: legally and physically possible, financially feasible, and maximally profitable. Lane noted that maximally profitable use requires that it be “politically appropriate” – “political and social opposition to a proposed use may exclude that alternative as the highest and best use, unless the reasonably probable economic return is sufficient.”

<sup>10</sup> In his report, Lane wrote “TWO MILLION FIVE HUNDRED THOUSAND DOLLARS” but also wrote “2,900,000”. In his sworn interview, Lane testified that he had meant to write “TWO MILLION NINE HUNDRED THOUSAND DOLLARS” (Emphasis added).

and the resulting SEQRA review that was conducted based on that representation. A 20 percent deduction applied by the Dormitory Authority staff to Lane's appraisal resulted in a purchase price of \$2,320,000.

### *The Jackson Appraisal*

Howard Jackson, the sole proprietor of Integrated Real Estate Services, was retained by ICCC to prepare an appraisal of the property. Jackson testified to the Inspector General that his understanding was that both parties wanted to set a selling price. In explaining how he appraised the property, Jackson related that he used a sales comparison approach and that the appraisal was conducted while the market was peaking. Jackson's appraisal also took into consideration a number of environmental conditions.

Jackson testified to the Inspector General that, in or about late October 2006, he had met at the Creedmoor site with a mortgage corporation representative and three representatives of the ICCC including Koshy Thomas and Kuriakose Varkey. Jackson testified that the ICCC representatives told him that they planned to build a two-story community development building on the site.

Jackson testified to the Inspector General that the appraisal was difficult to conduct because the property had no direct street frontage. Instead, the purchaser was to be granted a 40-foot wide street access to 82<sup>nd</sup> Street and there was going to be internal access via 6<sup>th</sup> Street; there would also be a non-vehicular walkway. Jackson also learned that soil would be stored on the site by the Dormitory Authority for three years for the Dormitory's later unrelated use.

In his October 10, 2006 report, Jackson noted that several factors affected the land's appraisal value, including: an irregular "butterfly" shape; limited ingress and egress; limited frontage; environmental issues; soil required to be stored on the property for use in remediation of environmental issues; buildings on the land at the end of their usable life; and zoning issues constraining buildable area. Jackson also analyzed the site's location and its zoning composition.<sup>11</sup> Accordingly, he analyzed the highest and best use to be in line with a community center. Based upon comparisons with other sales and taking into consideration all of the above analysis, Jackson submitted his initial appraisal of \$2,810,000 based on a preliminary valuation of \$5,800,000, less \$2,969,600 for soil storage and \$20,000 for a zoning variance required to address the access issue. Jackson noted that this appraisal did not include the cost of remediation or demolition of existing buildings.

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<sup>11</sup> Jackson testified that he determined the zoning composition to be 1.33 acres of R3-2 residential zoning and 3.16 acres of C8-1 commercial.

Subsequently, the parties asked him to determine how much the value would change if a deed restriction were included to limit the development of the property to a two-story community center. By letter dated May 25, 2008,<sup>12</sup> Jackson informed the parties that he would apply a 30 percent discount to his appraisal, bringing the value to \$1,965,000.

Jackson testified to the Inspector General that if he had been informed of the possibility of the proposal including two nine-story residential buildings, it would have increased the appraisal of the property, but he noted that he had been tasked with appraising the property under certain constraints.

The Dormitory Authority used an average of the two appraisal values adjusted for deed restrictions as a starting point for the purchase price of \$2,142,500. The Dormitory Authority then adjusted the price downward based on two factors: structures on the site that needed to be removed required a reduction in the appraisal values to account for demolition costs, which were established by Dormitory Authority staff to be \$243,000; and a soil study by an environmental testing firm, Hydroqual, reflected a need for soil remediation, which also required a price adjustment of \$105,000. The resulting purchase price of \$1,794,500 was rounded to \$1,795,000.

### **ICCC Requests Removal of the Proposed Deed Restriction**

In August 2007, approximately one year after the original 2006 land-sale statute had been signed into law, the ICCC requested modification of the proposed deed restriction limiting use of the property to a two-story community center so that it could develop senior housing on the Creedmoor land it sought to purchase – a use that had not been mentioned since the early stages of the Indian-American community’s proposal. Specifically, by letter dated August 14, 2007, from Koshy Thomas of the ICCC<sup>13</sup> to Dormitory Authority Director of Real Property Services Joseph Durkin, the ICCC requested deed language that would permit any legally permitted non-profit use of the property.

Ignoring representations made to members of the State Senate and Assembly, extensive legislative history, information ICCC provided to the Dormitory Authority for SEQRA purposes, information ICCC provided to the Dormitory Authority’s appraisers, and the clearly-stated legislative justification for the bill to sell land to the ICCC for a community center, Thomas disingenuously wrote, “As you know, the Senate or Assembly [sic] never restricted the legal use of the property in the bill, when they both passed it several times.” He continued, arguing that a “community center” ought to be defined to include senior housing: “We are in the firm belief that the Senior Citizen Housing/Center, Chapel, Community Hall and administrative facility is part of the Cultural and Community Center (subject to all permits and clearances from the city).”

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<sup>12</sup> The May 25 letter lists “May 25, 2006” as its date, but the context of the letter (including references to dates in 2007) makes clear that it was drafted in 2008, not 2006.

<sup>13</sup> In the letter, Thomas referred to himself as “Project Coordinator.”

Thomas further argued that the Malankara Church, ICCC's predecessor organization, had presented a plan to Borough President Claire Shulman, which conformed to the 1999 Creedmoor Master Plan. In so arguing, Thomas was asserting, incorrectly, that the Church's 1999 plan had, in some way, incorporated by reference the 1999 Creedmoor Master Plan which recommended senior housing as one of the preferred uses for the land.<sup>14</sup> In fact, in the Master Plan, a chart entitled, "Expressions of Interest from Prospective Users" listed "Indian Community Center" as the expressed interest of the Malankara Church. Thomas's argument also conveniently ignored that the Church's 1999 plan included no housing component. Rather, the Church's 1999 plan only included a proposal to build a community center with comparatively limited facilities for seniors' use: "three rooms with a total area of 600 Sq. feet . . ." and "allowed use of the game room, prayer hall, living room, and dining room." Indeed, the 1999 plan conformed to the Master Plan only in that the Master Plan included a community center among its recommended uses for the land. Finally, while Thomas's letter pointedly noted the Master Plan's references to the need for senior living facilities, it again disingenuously ignored the Master Plan's recommendation that any development be "compatible in appearance and use with existing activities on the campus as well as are in character with surrounding neighborhoods." To be sure, two nine-story residential buildings clearly were incompatible with the character of the surrounding neighborhoods.

Two weeks later, by e-mail dated August 30, 2007, ICCC counsel Gary Pogeler wrote to Dormitory Authority counsel Mauro Lapetina and Director of Real Property Services Durkin "concerning an aspect of the deal that I did not up to this point, recognize as being as important as it is . . . the limitation on the use of the premises that has been inserted in the deed . . ." Pogeler attached a copy of Thomas's letter and reiterated the ICCC request that the limitation be removed so senior housing could be developed.

Durkin testified to the Inspector General that the ICCC's request for senior housing came "out of the blue." Durkin ultimately acceded to the ICCC's request and inserted a clause in the deed that, after 10 years, would give the ICCC the right to buy out the limitation of use, subject to a "veto" by OMH of uses contrary to OMH's own use of the Creedmoor campus:

PROVIDED however that the property and any improvements constructed thereon shall only be used for community activities and social gatherings . . . . Notwithstanding the foregoing limitation of the use of the property, at any time subsequent to the tenth anniversary of the recording of this Deed, the foregoing limitation may be removed from the Property upon the written

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<sup>14</sup> The Master Plan stated, "The purpose of the study is to identify the most appropriate land uses and design guidelines for future development of the Creedmoor Psychiatric Center campus, with particular emphasis on the two parcels designated by OMH for disposition in the near future."

determination of the New York State Office of Mental Health, or the appropriate successor in jurisdiction, that the then legally permitted uses of the Property will not adversely affect the activities, programs or operations conducted on any adjacent land owned by the State of New York and upon payment to the Dormitory Authority for State of New York [sic] an amount equal to thirty percent paid for the property . . . .

AND PROVIDED FURTHER, that so long as the Property is owned by the [ICCC], the Property may be used by the [ICCC] to provide a residential living facility for the aged at which spouse and dependent children may reside and at which assistive services may be provided . . . .

Durkin testified to the Inspector General that he assented to the ICCC's request for several reasons. First, he was not aware of the Legislature's justification for the 2006 statute; he only read the statute itself, which made no mention of a limitation of use for a community center.<sup>15</sup> To Durkin, the limitation of use of the land for a community center was not based upon a statutory justification, but was simply "kind of an assumption[.]" Durkin asserted to the Inspector General that the Legislature should have made its wishes clear by including in the statute the limitation of the use of the land as a community center. Additionally, Durkin indicated that he was motivated to negotiate with the ICCC to complete the transaction

so nobody could claim the Dormitory Authority wasn't being cooperative – that the Dormitory Authority was standing in the way of this transaction – 'Cause, let's face it, the state legislature authorized this transaction. Presumably they wanted it done. . . . Being a bureaucrat, if you don't get it done, who's going to complain if it's our fault?

Given the import of the Creedmoor land sale to the Legislature and the parties, the Inspector General questioned Durkin's apparent ability to solely negotiate the deed terms and sign the deed on behalf of the Dormitory Authority. The investigation revealed that since approximately 2007, Dormitory Authority Vice President Michael Corrigan has overseen, among other offices, the Office of Real Property (ORPS), and as such, Durkin reported to Corrigan. Corrigan related to the Inspector General that he and Durkin had regular discussions about the Creedmoor land deal. In the end, however, Durkin was in fact authorized to sign this deed.

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<sup>15</sup> Prior to assenting to the change in the deed restriction, Durkin did inquire of OMH Director of Administrative Support Services Edward Killeen and John C. Googas, Jr., Chief of Staff to Senator Padavan, regarding ICCC's requested changes. Neither raised the issue of legislative intent that the land be used for a community center.

Corrigan explained that the head of ORPS has been authorized for approximately 20 years to sign deeds and other such types of documents through a formal, documented designation. Such designations are made, according to Corrigan, because the Dormitory Authority is a “very transactional place. They are designated to an appropriate level where they have the knowledge and ability to complete a transaction. We have people signing bond documents that aren’t necessarily the CFO or the President.”<sup>16</sup>

Of note, the removal of the limitation of use was not communicated to the Dormitory Authority staff that was responsible for SEQRA review by either Durkin or ICCC. In testimony to the Inspector General, the Dormitory Authority SEQRA review staff indicated that such information would have been useful to know and to include in their environmental report even if it did not ultimately change it. Durkin, however, noted that, in the event that the zoning was changed and a plan for development of residential buildings was proposed in the future, an entirely new SEQRA study could be conducted at that time.<sup>17</sup>

### **Execution of Transaction, Assignment of Lot Numbers, and Assessment**

By executed Contract of Sale, Quitclaim Deed, and Deed, all dated July 1, 2008, the Dormitory Authority sold the two parcels of Creedmoor land described in the 2006 statute to the ICCC for \$1,795,000. It was not until two years later that the two parcels were assigned lot numbers.

In January 2010, the two parcels were assessed a value of \$7,346,892 by the New York City Department of Finance. The assessments included the City’s assessed value of buildings on the land. The assessment was later dramatically reduced, by \$2,363,892, to \$4,983,000, based on a re-evaluation of the condition of those buildings, which were deemed almost worthless. At no point did the assessments reduce the value of the land based upon the deed-restricted use of the property.

A representative of the New York City Department of Finance informed the Inspector General that the Department’s assessments did not take environmental conditions into consideration, and that sites with environmental conditions are typically assessed at 30 percent of total value.

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<sup>16</sup> Corrigan testified to the Inspector General that he and Durkin had had regular discussions while the transaction negotiation was proceeding. Asked if he recalled Durkin telling him that there was going to be a change in the deed language, Corrigan responded that he did not specifically recall Durkin telling him, but he recalled “seeing it in work product” through emails in which the ICCC sought “additional flexibility.”

<sup>17</sup> In its response to the Inspector General’s report, the Dormitory Authority took the position that, in hindsight, SEQRA review would not have been appropriate at that juncture because the actual development of residential housing was speculative and deferred. Irrespective of the merits of that position, this was clearly not the understanding of the relevant DASNY officials who testified to the Inspector General and does not undermine the Inspector General’s findings that DASNY’s process was flawed in failing to take into consideration the legislative justification for the land sale.

## **ICCC Solicitation of Subventions**

On June 10, 2008, to address its lack of funds, the ICCC sought permission to obtain financing via subventions – essentially a grant of money in exchange for consideration. Specifically, by letter to the Office of the New York State Attorney General and submission of a certificate of amendment, the ICCC sought to amend its Certificate of Incorporation to permit it to seek subventions. On June 12, 2008, the Attorney General’s Office reviewed the request to determine whether the request was consistent with the State’s Not-for-profit Corporation Law. Since that law permits not-for-profit corporations to accept subventions, the Attorney General’s Office stated that it had no objection to the granting of judicial approval on the ICCC’s request, acknowledged receipt of statutory notice, and demanded service of the filed certificate. The statement of “no objection” was conditioned on the “submission of the matter to the court within 60 days hereafter.” On June 26, 2008, the ICCC’s Certificate of Amendment of the Certificate of Incorporation was approved by the New York State Supreme Court.

Bank records and minutes of the July 3, 2008 ICCC Board meeting reflect that the ICCC began to solicit funds prior to June 12, 2008, when it received permission to do so, and began receiving checks as early as June 10, 2008. According to the July 2008 ICCC board meeting minutes, between 50 and 60 people had “given money to ICCC to raise funds for the closing.” Many of those who provided funds to the ICCC informed the Inspector General that they had been told by representatives of the ICCC that the monies they provided would entitle them to a unit in the senior housing that the ICCC intended to build on the Creedmoor property. Records reflect that the ICCC raised over \$2 million for this endeavor.

Subventors’ reports to the Inspector General varied widely as to what they were promised.<sup>18</sup> For example, one reported a promise of a 1/50<sup>th</sup> share of a building consisting of senior housing, and that he could sell the shares to someone else. Another reported being told that the building would consist of 80 units. Some were told that the money would permit them an option to purchase an apartment. One was initially told that the money was going towards the development of a community center, and later told that senior housing was being developed. Some were informed of a community center being built, and not told about housing.

Some of the people who provided funds to the ICCC received no paperwork confirming same. Some received a document entitled “Payment Acknowledgment.” The document acknowledged a monetary payment to be “used towards the purchase of a Subvention with a value of Fifty Thousand Dollars . . . to assist the ICCC in the purchase and initial development and maintenance of a parcel of land at Creedmoor Hospital campus at Bellerose, Queens, New York . . . .” The document also noted that the payment was subject to certain terms, including

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<sup>18</sup> The Inspector General spoke to over 40 individuals or couples who provided funds to the ICCC of the more than 60 individuals or couples who, based upon bank account analysis, appear to have provided funds to the ICCC for the Creedmoor project.

the issuance of a “Subvention Certificate” upon full payment of \$50,000. The “Payment Acknowledgment” also stated:

The ICCC is using good faith to obtain approvals and permits to build a proposed senior housing facility (“Center”) on the Property. If the Center is fully built and completed . . . then you as a holder of a Subvention will be granted **a right to own a dwelling unit** of the Center . . . provided however you shall share in the cost of construction and development of the Center and will provide payments for any related improvements or maintenance. You are required to provide any additional contributions and/or join as an applicant to apply for finance/loans as may become necessary. (Emphasis in bold added).

Thus, the ICCC appears to have promised a right to ownership of an apartment that was at odds with the deed’s preclusion of ownership of the property by any entity other than the ICCC.

### **ICCC Attempts to Seek Additional Land**

In or about 2010, the ICCC sought to purchase additional property on the Creedmoor campus, in part to address the purchased property’s lack of frontage onto a New York City street. Legislation enabling the conveyance of the land was passed by the Legislature.<sup>19</sup> The proposed legislation noted that “Chapter 156 of 2006 allowed for an Indian-American Community Center to be established on a portion of Creedmoor property.”

In August 2010, then-Governor David Paterson vetoed the proposed legislation due to OMH’s objection that the sale would have created a patchwork of properties that would have been difficult to sell later. In his veto message, Paterson reiterated the purpose of the land transactions, namely that “[t]he sale of the Original Parcel to the ICCC was in aid of an effort to address the needs of the growing Indian-American community, many of whom reside near [Creedmoor], to enable them to establish a community center.” Paterson added, “Unfortunately, while I am fully supportive of the ICCC’s efforts to establish a community center on the property it purchased two years ago, this bill substantially interferes with the prudent management of State real property.”

Subsequently, the proposed additional property to be sold to the ICCC was modified to address OMH’s concerns, and new legislation was introduced, this time by Assemblywoman Barbara Clark, although Creedmoor is not located within her district. The bill was also introduced in the Senate, but withdrawn when the instant controversy over the land sale erupted.

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<sup>19</sup>A 9924-A / S6827-A.

## **Publicity After ICCC Files Application with NYC Board of Standards and Appeals**

On May 27, 2011, the ICCC filed an application seeking a zoning variance with the New York City Board of Standards and Appeals (BSA) that would permit the construction of a residential building on the Creedmoor property. The land is currently zoned for commercial uses including a community center. The application noted that the ICCC had already sought assistance from real estate development experts, and set forth the essential legal structure the ICCC expected to follow “to provide and maintain affordable housing for seniors over an extended period of time.”<sup>20</sup> Drawings submitted as part of the application reflected the ICCC’s plan to develop “two 9-story community facility & senior residential center.”

The zoning variance process is proceeding, as is the process surrounding the ICCC’s application for a waiver from a General City Law requiring street access to buildings before a certificate of occupancy may be issued.

In June and July 2011, news media published articles detailing the history of New York State’s sale of land to the ICCC and raised questions about the difference between the land’s purchase price and its City-assessed value, as well as the ICCC’s newly announced plans to build the two nine-story buildings and attempts to purchase additional land. The articles quoted complaints from members of the community and a local representative. Internet blogs also reported and commented on the sale.

## **FINDINGS AND RECOMMENDATIONS**

A sale of land in the public’s interest to a purchaser without competition requires particular scrutiny. The land in question must be appraised for the purpose for which the purchaser actually intends to use the property, and the government’s intended purpose must be reflected properly in transaction documents. Moreover, the Dormitory Authority or any agency tasked with consummating such a transaction should exercise a heightened level of diligence.

The Inspector General found that, while the legislative history and stated justification for the statute authorizing the sale of state land on the Creedmoor campus to the ICCC contained clear language expressing the reasons for that sale – to build a community center – the actual statute did not contain any language limiting the use of the land for a community center. During transaction negotiations with the Dormitory Authority, the ICCC exploited that drafting lapse, in part because the Dormitory Authority staff tasked with consummating the transaction did not exercise sufficient diligence. Staff tasked with drafting the deed and other relevant transfer

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<sup>20</sup> The ICCC’s interaction with the BSA date at least as far back as October 22, 2009, when representatives of the ICCC and the BSA held a “pre-application meeting” to discuss the “proposed zoning variance application . . . .” The ICCC’s initial Statement of Facts and Findings, sent by its counsel on May 27, 2011, was voided on June 8, 2011, when an edited version of the Statement, still bearing the original May 27, 2011, date was submitted to the BSA.

documents neglected to review the adjunct language regarding the legislature's justification for the sale. As a result, that staff wrongly permitted the ICCC the option to purchase the right to develop something other than a community center, namely senior housing. Such a project was never contemplated by the legislators who sponsored the legislation, other legislators, or the Governor, all of whom may have wanted the opportunity to consider the concerns of the very constituents who now oppose the development of residential housing.

The Inspector General found that the apparently vast differences between the sale price of \$1,795,000, which was based upon two independent appraisals, and the City's 2010 assessment of \$7,346,892 could be reconciled if the same factors were considered in both. The Dormitory Authority's determination of a market price for the Creedmoor property was based upon two independent appraisals of the land that made adjustments for environmental conditions and for restrictions on the land's use. The Inspector General found, by comparison, that the City's Department of Finance did not take into account environmental conditions, and included the value of the buildings on the land when it assessed the property. The City also did not take into consideration any limitation on the use of the property. While the Inspector General found that proper diligence by the Dormitory Authority staff should have resulted in the Dormitory Authority refusing the ICCC's request to include a purchase option that would allow the development of senior housing, it should also be noted that the two appraisers who worked to determine the market price were not informed by the ICCC or the Dormitory Authority of the purpose for which the purchaser actually intended to use the land. Had the Dormitory Authority or ICCC conveyed this information, the value set forth by the independent appraisals likely would have been different.

Similarly, the failure by Dormitory Authority officials to inform their colleagues and a retained contractor tasked with performing the SEQRA analysis and review of the ICCC's plan to build residential housing resulted in an incomplete SEQRA review. As the Dormitory Authority's environmental analysis contractor and Dormitory Authority staff testified, such information would have led to different analyses and would, at very least, have been useful to know even if that information did not ultimately change the outcome.

Accordingly, the Inspector General recommended that the Dormitory Authority develop policies and procedures for the sale of state land pursuant to special legislation requiring staff to review and analyze not only the enabling statute but the history and intent of the legislature in passing such legislation. All relevant Dormitory Authority staff must be trained in those policies and procedures.

In response to the report, the Dormitory Authority has agreed to the Inspector General's recommendations and will develop policies and procedures and conduct training on these policies and procedures by December 31, 2013.

The Inspector General is referring to the Office of the Attorney General the findings contained in this report.