

**Nassau County
Office of the Comptroller**



**Limited Review
of the
Friends of Nassau County Recreation, Inc.**

**(A Not-For-Profit Corporation
Working to Benefit Nassau County Parks
and Promote Their Use)**

GEORGE MARAGOS

Comptroller

February 28, 2013

NASSAU COUNTY
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EXECUTIVE SUMMARY

Introduction:

The Friends of Nassau County Recreation, Inc. (“Friends”) was established in 1980. This not-for-profit corporation was created to foster appreciation of Nassau County parks and to encourage their usage for leisure and recreational purposes.

In 2007, a Memorandum of Understanding (“MOU”) between Nassau County (acting on behalf of the Department of Parks, Recreation and Museums) and Friends was signed. The MOU outlined certain guidelines with regard to funding, advertising, expenditures, accounting procedures, etc. In the MOU, Friends agreed to provide administrative support with regard to the Long Island Marathon.

Friends’ principal office is at the Department’s Administration Building in Eisenhower Park. The structure of Friends is that of a non-profit organization with no political affiliations. They make no contributions or donations.

Purpose

The purpose of this review was to assure that Friends was following the requirements set forth by its corporate charter and that they complied with the tax requirements required of not-for-profits. In addition, we assessed the effectiveness of the agency’s operations and internal controls.

Key Findings:

- Friends did not file their 2011 Form 990 on a timely basis, which compromised their status as a not-for-profit organization.
- There is non-conformity with the Corporate Charter and Bylaws. The Bylaws call for a minimum of three directors; however, only one, the President, is currently in place. Furthermore, the individual who has assumed the role of “Treasurer” was not formally elected by the board but is signing for the organization in that capacity.
- There is a lack of control over receipts (checks and cash) and internal control weaknesses exist due to the lack of segregation of duties. There was no evidence of reconciliations of cash collections or safeguarding of cash receipts.
- Friends did not issue W-9s to vendors or send out 1099s when indicated. They did not take advantage of their tax exempt status in all instances, thus paying sales taxes unnecessarily.
- Bank balances at one bank exceeded FDIC limits by approximately \$250,000. Only one signature is necessary for the issuance of checks, regardless of the dollar amount.
- There are no written procedures in place for Friends in order to document accounting procedures or receipt collection from the various activities, including the Long Island Marathon.

EXECUTIVE SUMMARY

Summary of Key Recommendations:

- All required filings should be done on a timely basis in order to comply with Internal Revenue Service (“IRS”) regulations. This is necessary so that Friends can retain its status as a tax exempt non-profit organization.
- Friends should take action to fill vacant board positions, including the position of Treasurer. Both the Bylaws and the New York State Office of the Attorney General call for a minimum of three Directors for New York Charitable Corporations.¹ The Bylaws call for five members to constitute a quorum to conduct the business of the Corporation.
- Pre-numbered receipts should be issued for Marathon entrants. This will assure a measure of control as it will require Friends to match the receipts with the fees collected. Whether entrants pay online or in person, there should be a process in place to account for the “numbers” that have been issued to runners.
- Dual signatures should be required for checks in excess of a large dollar value. This will provide an added measure of control against unauthorized payments going out.
- W-9s and Form 1099s should be sent out in accordance with IRS regulations.
- Bank balances should not exceed the current FDIC limit for insurance protection. The current limit for interest bearing checking accounts is \$250,000 per depositor.
- Written procedures should be established, with emphasis on the maintenance of bank accounts and the division of responsibilities. Completion of tasks should be allocated among different individuals. This requires Friends to add additional people to its list of officers. Also, there should be cross training between the personnel dedicated to the Marathon with those who currently work exclusively on the Friends accounts.

The matters in this report have been discussed with the President of Friends of Nassau County Recreation, Inc. and the officials of the Nassau County Department of Parks Recreation and Museums. On January 3, 2013, we submitted a draft report to them for their comment. The Parks Department’s comments and our responses to those comments are included as Appendix B to this report.

¹ NYS Office of the Attorney General, CharitiesNYS.com.

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INTRODUCTION

Background

The Nassau County Department of Parks, Recreation and Museums (“Parks”) manages more than 70 parks, preserves, museums, historic properties and athletic facilities comprised of 6,000 acres throughout the County. Some of the museums, namely Bailey Arboretum (part of Friends of Nassau County Bailey Arboretum in Locust Valley), Cradle of Aviation, Holocaust Memorial and Education Center, the Long Island Children’s Museum and the Nassau County Museum of Art, are independently run.

Established in 1980, The Friends of Nassau County Recreation, Inc. (“Friends”) was created with the following goals in mind:

- To foster appreciation of Nassau County parks and encourage their greater use for leisure and recreational purposes;
- To contribute to the restoration and beautification of the parks and promote their use; and
- To assist in the development of recreation and cultural programming in Nassau County park facilities.

Friends was established under Section 402 of the Not-for-Profit Corporation Law.² Upon its organization in 1980, the Nassau County Department of Parks, Recreation and Museums consented to its formation with the expectation that Friends would work to achieve the above listed goals.

Friends agreed to conduct its activities in a manner consistent with the operations and best practices of comparable not-for-profit and cultural institutions in the New York metropolitan area. Included with these activities is the Long Island Marathon, which takes place on the first Sunday in May. The Marathon had its first run in 1970 and its popularity continues. The Greater Long Island Running Club, with the help of Nassau County and Friends, brings a series of four races in a “Run Nassau” program leading up to the Long Island Marathon, which in 2012 took place on May 5 and 6. For a detailed view of the Marathon’s revenues and expenses, see the chart in Appendix A.

The following schedule summarizes Friends’ revenues and expenses for the years ending December 31, 2011 and December 31, 2010:

² Friends is a corporation as defined in subparagraph (a) (5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law.

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Friends of Nassau County Recreation Revenues And Expenses for 2011				
	<u>Totals</u>	<u>LI Marathon</u>	<u>Program Accts</u>	<u>General Fund</u>
Revenues	\$ 900,557	\$ 482,244	\$ 417,819	\$ 494
Expenditures	901,028	442,403	457,570	1,055
Excess (Deficiency) Revenues over Expenses	(471)	39,841	(39,751)	(561)
Net Assets as of 12/31/10	488,922	265,379		223,543
Transfer to General Fund to Cover Shortfall			39,751	(39,751)
Net Assets as of 12/31/11	\$ 488,451	\$ 305,220	-	\$ 183,231

Friends of Nassau County Recreation Revenues And Expenses for 2010				
	<u>Totals</u>	<u>LI Marathon</u>	<u>Program Accts</u>	<u>General Fund</u>
Revenues	\$ 629,855	\$ 401,114	\$ 228,158	\$ 583
Expenditures	682,481	415,578	264,903	2,000
Excess (Deficiency) Revenues over Expenses	(52,626)	(14,464)	(36,745)	(1,417)
Net Assets as of 12/31/09	541,548	279,843		261,705
Transfer to General Fund to Cover Shortfall			36,745	(36,745)
Net Assets as of 12/31/10	\$ 488,922	\$ 265,379	-	\$ 223,543

Source: 2010 -2011 Independent Audited Financial Statements for Friends of Nassau County Recreation Inc.

Review Scope, Objectives, and Methodology

The purpose of this review was to assure that Friends was following the requirements set forth by its Corporate Charter and that they complied with the tax requirements required of not-for-profits. An additional objective during the review was to ensure that Friends' work was in keeping with the intended purposes stated in the Certificate of Incorporation. In conjunction with this, we reviewed relevant policies, procedures, and internal control guidelines and standards.

In addition, we assessed the effectiveness of the agency's operations and internal controls over cash collections. We examined the receipts and disbursements from the different programs, including the Long Island Marathon, to review the controls associated with the collection of both cash and checks.

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In order to accomplish our goals, we conducted tests of transactions, including examinations of both the recording and reporting of revenues. The period covered in the review is January 1, 2010 through December 31, 2011.

We met with the employees who perform various functions for Friends. We also met with the CPA firm that has responsibility for tax compliance. We believe that the review provides a reasonable basis for the findings and recommendations.

FINDINGS AND RECOMMENDATIONS

Review Finding (1):

The Organization Failed to File a Federal Tax Form 990 with the IRS for the Year 2011, Jeopardizing its Status as a Non-Profit Organization

An Internal Revenue Service (“IRS”) Federal Tax Form 990 is an annual reporting return. Most federally tax-exempt organizations, with the exception of churches and state institutions, are required to file these forms providing information on the filing organization’s mission, programs, and finances. Friends did not file this form nor did they request a timely extension to file, and thereby jeopardized their tax-exempt status.

The organization is responsible for filing a Form 990 with the IRS to maintain its tax exemption. For a calendar year organization (when the accounting year ends on December 31), the due date for Form 990/990-EZ is May 15. Timely filing of Form 8868³ may extend the due dates of the return for three months. By failing to file an extension, Friends runs the risk of having to pay taxes on their income, in the same fashion as a profit making organization.

The CPA firm is working with the IRS for reinstatement of the organization’s status as a Non-Profit Organization. They have provided us with a copy of the correspondence they received from the IRS and have been able to get an extension to have the organization’s status reinstated. This requires completion of an amendment to Friends’ charter stating:

“Said organization is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501c (3) of the Internal Revenue Code, or corresponding section of any future federal tax code.”

Per the CPA, once the amendment is completed, Friends will be able to comply with the IRS. (The IRS is allowing for the 60-day response time New York State may take to approve the charter amendment.)

Review Recommendations:

Friends must follow up with both New York State and the IRS to obtain reinstatement as a non-profit agency.

Review Finding (2):

The Organization Does Not Comply with its Not-For-Profit Bylaws, which Provide for a Board of at Least Three Directors and to Hold Regularly Scheduled Meetings

Friends’ Corporate Bylaws require at least three directors; at present they have only two. Friends is administered by a President who is not a Nassau County employee and who receives no payment for this function. The Treasurer, a Nassau County employee, spends a portion of his workday on Friends activities.

³ Form 8868 is an Application for Extension of Time to File an Exempt Organization Return.

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The bylaws also provide for an annual membership meeting each September 15th and regular quarterly meetings, which are not being held at this time. We confirmed that there have been no meetings since 2009.

Review Recommendations:

Friends should conform to its Bylaws requirements of a minimum of three board members.

Review Finding (3):

There is a Lack of Internal Control over Cash Receipts, Particularly for the Annual Long Island Marathon

For the last two years, Friends receipts averaged over \$638,000 annually from multiple sources for the programs listed below:

- Long Island Marathon
- 9/11 Memorial
- Administration
- African American Museum and Center for Education and Applied Arts
- Aquatics
- Baseball/Softball
- Car Show
- Cedarmere
- Chelsea Mansion-Muttontown
- County Executive Soccer Cup
- Hockey
- Lacrosse
- Old Bethpage Village Restoration

All of the various activities listed above, including the Long Island Marathon, have separate individuals collecting money. The individuals consist of volunteers, County employees and contractors running the particular program or activity. The County MOU designates employees to “provide assistance to Friends as may be necessary from time to time”. Two Parks employees, an Accountant and an Equipment Operator provide accounting and recordkeeping assistance to Friends, and assist with the Long Island Marathon.

There were several serious cash control weakness noted during this review:

- During our review of the Long Island Marathon fees, we were not able to obtain a reconciliation of the number of runners paying the entrance fees to the revenues recorded. Fees were paid using on-site computers at an exposition preceding the actual event, or in advance through an online company. Approximately 10% of their receipts are in the form of cash. Cash received from walk up registration (Long Island Marathon) is usually stored in a lockbox and then locked up at night in an office.

FINDINGS AND RECOMMENDATIONS

- Receipts are also dropped off to Parks for other activities without any accompanying backup. For example, the Parks' Accountant will receive an envelope marked "Hockey" without any information on how many teams registered or who collected the money.
- Because activity money is comingled before drop off at Parks, there is no way to determine whether all receipts received are from "non-profit" activities. For example, sale of merchandise, shirts, mugs, etc. might be considered as "for profit" sales. Without proper reporting, this may jeopardize Friends' standing as a "non-profit" agency. The outside CPA firm could not rule out the possibility that in some cases revenue from the sale of merchandise was being deposited.
- When receipts are dropped off at their office, the Parks' Accountant prepares the deposit slip and also makes the deposit. Copies of checks are not made at that time which does not allow for an audit of who paid what and how much. This Parks' Accountant also prepares the vouchers, bank deposit slips, and then completes the bank reconciliations. Proper internal control requires that there be a segregation of duties between these cash functions because of the increased risk when the same person has responsibility for cash/check collection and general ledger entries. This risk increases again when the same individual has responsibility for all of these functions.
- There are no policies in place to set the control environment for the organization. The organization needs procedures to ensure that every responsibility is accounted for. The organization's many activities need to have written procedures to ensure there is continuation in the event of the loss of a volunteer or Parks employee with the knowledge of the program.

There is some oversight in that the checks are signed by another individual, the President of Friends.

Review Recommendations:

Friends should take the following actions:

- Segregate the cash receipt, banking, disbursement, and accounting functions.
- Consider hiring a part-time employee to handle bookkeeping functions.
- Consider using a computerized recordkeeping system such as QuickBooks for use by the Marathon staff, which would provide a proper audit trail of transactions.
- Tighten control over collections, including preparing a reconciliation of Long Island Marathon receipts, to assure that all entrants pay and that all payments are received and accounted for by Friends.
- Cash deposits should be made on a timely basis, preferably on the day the cash is received, including a night deposit if necessary, for large receipts.
- Friends must increase the safeguarding of the assets of the organization by developing written procedures for cash receipts, cash disbursements and bank reconciliations along with the Program/Activity Procedures.
- The Treasurer should receive and reconcile bank statements, or prepare checks, but should not hold responsibility for both functions.

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- Checks exceeding a specified dollar amount, for example, \$5,000 and above, should require two signatures.

Review Finding (4):

The Memorandum of Agreement (“MOA”) between Nassau County and Friends has Expired and Does Not Provide for Reimbursement for the Use of County Employees

In May of 2007, A Memorandum of Agreement (“MOA”) was signed between Nassau County and Friends for a term of five years. The MOA expired in May, 2012 and as of this date there has been no extension signed.

The MOA provides for the use of County employees to assist Friends as “may be necessary from time to time to further the purposes of the MOA”. The County agrees to furnish the use of the Administration Building at Eisenhower Park to carry out these functions and for meetings.

Administrative fees for employees who work for Nassau County and assist in Marathon activities have been reimbursed to the Treasurer of Nassau County from the Marathon’s Friends checking account. In June of 2011, this amounted to \$18,000.

The Accountant and an Equipment Operator, who are the primary staff members assisting Friends, are on the payroll of Nassau County. When we interviewed the employees who worked at Parks Accounting as well as on the Marathon, we were told that they spend between 40-50% of their time on these activities. However, there are no specific dollar amounts or guidelines in place in the MOA to provide the County with reimbursement of salaries and/or benefits for these employees.

Review Recommendations:

A current MOA should be executed to ensure that Friends continues to provide services to Nassau County to further the development and implementation of activities at its parks, preserves and athletic events. The MOA should include a financial agreement whereby Nassau County would be reimbursed for employees dedicating their time to programs run by Friends.

Review Finding (5)

Friends did not Require W-9 Forms nor did it Issue Form 1099s as Necessary

Friends does business with a variety of vendors whose services range from providing historic costumes for programs at Old Bethpage Village Restoration to furnishing trophies for junior hockey programs. The Long Island Marathon utilizes multiple services from vendors, which provide everything from banners and lighting to provisions for runners such as water and Gatorade.

FINDINGS AND RECOMMENDATIONS

Friends did not require all vendors to complete a W-9 Form when providing services. The most effective way to obtain the information needed to prepare Form 1099 MISC is to require the vendor to complete an IRS Form W-9 prior to any vendor payments. Without a completed W-9 Form on file, it is difficult to determine the type of organization that is providing the service and whether it is subject to backup withholding.

By not issuing 1099s, the organization is subject to potential failure to file penalties. The IRS requires businesses (including not-for-profit organizations) to issue a Form 1099 MISC (miscellaneous income) to any individual or unincorporated business when paying more than \$600 per calendar year for services rendered. This is required whether these payments are spread out over the course of the year or are paid in one lump sum payment.

Review Recommendations:

Friends should require all vendors to complete a W-9 Form prior to any payments for services rendered. At year end, Friends should issue a Form 1099 MISC where required.

Review Finding (6):

Friends Does Not have Adequate FDIC Insurance on Bank Balances, Because it is Utilizing One Bank

Friends has two bank accounts at one bank with the same official having signing authority. The combined cash balances at the end of the years 2009 and 2010 exceeded \$500,000. As a result, the account is not fully insured.

The current standard deposit insurance amount is \$250,000 per depositor, per insured bank, for each account ownership category.

Review Recommendation:

The balances in the accounts should be monitored to assure that they remain below the threshold covered by the FDIC. If there is in excess of \$500,000 in Friends' bank accounts, the accounts should be set up at multiple banks, with no one account holding more than \$250,000

Review Finding (7):

The Organization Failed to Utilize its Sales Tax Exemption Status when Making Purchases

Friends, as a not-for-profit organization incorporated under the Laws of the State of New York, applied for sales tax exemption status, giving them the right to make exempt purchases on behalf of their organization.⁴ This gave them the right to have their purchases of tangible personal property and services generally exempt from sales tax, provided the exempt organization is the

⁴Form ST-119-2 Application for An Exempt Organization Certificate NYS Dept. of Taxation and Finance.

FINDINGS AND RECOMMENDATIONS

direct purchaser, occupant or patron of record. The organization was able to gain this status by proving they are organized and operated exclusively for charitable purposes.

During the course of the review, we noted there were instances when purchases made by Friends included the payment of sales tax. These payments were direct payments to vendors for catering expenses and printing orders, which should have been tax exempt. One instance was a payment for catering for a car show event in 2010, which included a sales tax payment of \$123. A payment for printing of a summer recreation mailing in March of 2012 included a payment of sales tax totaling \$201.

Friends also paid sales tax to individuals when they reimbursed them for purchased items made on behalf of Nassau County. These reimbursements were distributed from Friends of Nassau County Recreation bank accounts. These purchases are taxable, as the law provides you cannot use the tax-exempt certificate of the intended recipient. Making purchases in this indirect method does not allow Friends to avail themselves of the tax savings.

Review Recommendations:

Friends should not include sales taxes in their vendor payments for purchases, as they are a holder of a valid tax exemption certificate. Going forward, Friends should establish a procedure to ensure that sales tax payments are not included in amounts paid to vendors.

By presenting the exemption certificate to all vendors before making payments (or noting it when the purchase order is written), the taxes will be deducted from the bill before it is presented to Friends and lessen the chance of erroneous inclusions. The law does not allow for this benefit in the case of reimbursements to individuals who make purchases on behalf of Friends; therefore, Friends should make every effort to make direct purchases in order to take advantage of this tax saving.

Review Finding (8):

Friends did not obtain a Fidelity Bond to Ensure Against Losses

No fidelity bonds are in place to cover the operational staff, which consists of Nassau County employees and volunteers.⁵ When one or more employees have the responsibility for cash deposits as well as checks, a fidelity bond should be considered as a protective measure in case of either intentional or unintentional losses. The By-laws give the board the ability to require any agent of the corporation be bonded. The MOA also requires that Friends obtain and maintain term bond/crime insurance in an amount of not less than one million dollars.

⁵ A fidelity bond is a form of insurance protection that covers policyholders for losses incurred because of fraudulent acts by specified individuals.

FINDINGS AND RECOMMENDATIONS

Review Recommendation:

It would be prudent for this not-for-profit to purchase a fidelity bond as a protection against financial loss that might occur because of an officer, volunteer or employee's fraudulent activity. This must be purchased at Friends' own expense in accordance with the MOA.

Appendix A

**Long Island Marathon
Friends of Nassau County Recreation
Revenues And Expenses**

	<u>2011</u>	<u>2010</u>
<u>Revenue</u>		
Online	\$ 280,279	\$ 252,163
Paper	82,650	80,029
Sponsorship	67,500	78,714
Miscellaneous	7,490	5,364
Expo (held prior to Marathon)	4,392	7,525
Total	\$ 442,311	\$ 423,795

General/Administrative Expenses

Giveaways to Participants	\$ 157,062	\$ 144,634
Outside Services	149,912	104,045
Race Supplies	22,561	34,179
Facility Rentals	22,239	34,556
County Administrator	18,161	29,118
Signage	16,864	22,520
Printing	14,695	23,773
Advertising	10,832	4,824
Medical Expenses	6,617	9,427
Sponsorship Expenses	6,007	-
Expo Expenses	5,858	10,384
Volunteer Expenses	3,632	3,824
Postage	3,433	2,427
Entertainment	2,800	4,800
Sanction and Insurance	1,335	1,335
Miscellaneous Expenses	130	225
Total	\$ 442,138	\$ 430,071

Notes: \$430,071 includes \$14,464 which was transferred to the General Fund to cover shortfall in 2010. Revenues include race fees collected in advance and prepaid marathon expenses of \$22,700.

Appendix B – Department of Parks Response and Auditor’s Follow-up

EDWARD P. MANGANO
COUNTY EXECUTIVE



CARNELL T. FOSKEY
COMMISSIONER

COUNTY OF NASSAU
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EISENHOWER PARK - EAST MEADOW, NEW YORK 11554
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February 1, 2013

JoAnn F. Greene
Director of Field Audit
Office of the Comptroller
240 Old Country Road
Mineola, NY 11501

Dear Ms. Greene,

This letter is written in response to the Audit of Friends of Nassau County Recreation, Inc. Please be that this Department is currently implementing the Comptroller’s recommendation of segregating functions. Separate employees will be responsible for the function of cash receipts, banking, and disbursements. The Department is also looking into hiring a part-time employee to handle the bookkeeping function.

In addition the Department is currently gathering the necessary information so that the Friends can issue Form 1099 for the fiscal year 2012 where applicable. Going forward, we will be issuing W-9 to all vendors when applicable.

Moreover, Department is currently creating a manual that will include specific procedures involving cash collections and internal controls as it pertains to the Friends of Nassau County Recreation.

You are further advised going forward, strict compliance will be required regarding the reimbursement or payment of sales tax.

Additionally, cross training will be required between the personnel responsible for the Marathon account with those that work on the general Friends account.

Very truly yours,

A handwritten signature in black ink, appearing to read "Carnell T. Foskey".

Carnell T. Foskey, Commissioner
Nassau County Department of Parks, Recreation and Museums

Appendix B – Department of Parks Response and Auditor’s Follow-up

Auditor’s Follow-up Response:

We commend the Nassau County Department of Parks, Recreation and Museums for their commitment to work with the Friends of Nassau County Recreation, Inc. to address the recommendations made by the Nassau County Comptroller’s Office. These include the segregation of duties through cross-training and/or hiring, improved processes for cash collections, and the filing of IRS Form 1099s. We acknowledge the ongoing efforts in obtaining the reinstatement of their non-profit status with the Internal Revenue Service.

We reiterate some other urgent actions needed that are not mentioned in the response:

- *The organization must comply with its bylaws, hold regularly scheduled meetings of the Board of Directors and actively seek to maintain the required number of board members;*
- *The Memorandum of Agreement between the County and Friends needs to be renewed; and*
- *The proactive creation of a procedures manual will help ensure the ongoing successful operation needed for recreational activities as well as the Long Island Marathon.*