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'Cozy deal' strips city of \$35M in assets

Private companies Faiella created in 1980s and '90s legally own structures built largely with public money

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In the fall of 2001, Alfred Faiella's quarter-century reign as executive director of the Newark Economic Development Corp. came to an inglorious end.

A group of activist trustees at the agency, the primary vehicle for luring investment to the city since 1964, had clashed repeatedly with Faiella over his development policies, and they wanted him out.

Faiella, also a Newark deputy mayor, agreed to resign without a fight, a somewhat surprising stance given his reputation for two-fisted control.

Then came the bombshell.

While he would step down from the nonprofit agency, Faiella refused to resign as president of eight affiliated companies he had formed over the years to support the NEDC as it worked to bring jobs, development and a measure of prosperity to one of America's poorest cities.

Together, the private corporations owned at least \$35 million in assets, including two lucrative downtown parking garages, a South Ward warehouse and at least \$3 million in cash.

Though built and financed largely with public money, the projects -- and the millions of dollars they generated in parking revenue and rent -- were legally distinct entities, Faiella asserted, and therefore not under city control.

"These are separate and apart from NEDC and the city," Faiella told The Star-Ledger at the time.

Angry City Council members launched an investigation, demanding to know how Newark had been stripped of assets it helped build. The council hired a Roseland accounting firm, Rosenfarb Winters, to scrutinize the books of the NEDC and its affiliates.

The yearlong audit, the results of which have not previously been published, found that Faiella and two fellow trustees amended the bylaws of the affiliate corporations, removing language that called for the president, vice president and secretary of the NEDC to automatically serve as trustees of the affiliates.

Without common board members, the NEDC, and by extension the city, no longer had influence over the companies, the audit concluded.

That left Faiella and his trustees with exclusive control over how the corporations spent their money and, in keeping with charitable requirements, over which organizations received cash grants.

It meant Newark officials couldn't tap into parking revenues from the garages to hire more police officers or to plug budget gaps. And it meant the city couldn't seek to sell the properties.

Today, Faiella remains at the helm of the firms, drawing a salary and benefits package topping \$200,000. All of the firms' headquarters are in an office suite at the Legal and Communication Center, next to Newark Penn Station.

The office also houses Faiella's private law practice and his real estate consulting business. One of the affiliates, NEDC Riverfront Corp., pays the rent.

Faiella, 55, declined to comment for this story. In written responses to questions, his lawyer, Michael Faul, said the companies have "benefited the city enormously," paying millions of dollars in property taxes and spending millions more on community projects.

One cash grant helped prop up a struggling Newark movie theater. Another helped a youth cultural program. A third went to Women in Support of the Million Man March.

But current and former members of the City Council, along with longtime observers of Newark's political scene, continue to find fault with the arrangement. They contend Faiella created for himself a high-paying sinecure overseeing assets and profits that should be at least indirectly controlled by the city.

Mayor-elect Cory Booker, a former councilman, called it "unconscionable" that Faiella refused to resign from the affiliated companies when he quit the NEDC and that the city has no control over publicly funded projects or the money they make.

"There is no rationale for our city to have allowed itself to lose millions of dollars in assets," Booker said. "It is a flat abuse of the public trust."

Booker said he will open a new investigation into the matter after he takes office July 1.

"We're going to have a lot of very competent attorneys reviewing all the documents ... to see what we can do to rectify the situation," he said.

To Dennis Gale, a professor of politics and government at Rutgers University and former head of the school's Cornwall Center for Metropolitan Studies, Faiella's arrangement seemed a "sweetheart deal."

"How did Al Faiella somehow write himself into not just a job for life, but what appears to be a powership share in these corporations?" Gale said. "That was very strange."

SEPARATE ENTITIES

The corporations, some for-profit, some nonprofit, were formed in the 1980s and 1990s with the broad mandate to make Newark a better place for its residents. Their charters, thick with legalese, dictate that they work "in cooperation and coordination with local governmental and civic bodies for the elimination of blight" and engage in activities "conducive to the general welfare of the city of Newark."

In practice, they were used to build and manage parking garages, to oversee construction of the South Ward warehouse, known as the South Ward Industrial Park, and to administer loans to developers. All of the projects received a substantial investment of taxpayer dollars, city records show.

The warehouse and the two garages have been proven moneymakers, providing the companies with collective earnings of more than \$2 million per year, according to tax documents.

Some of that money goes back to the community through grants. Some covers mortgage payments, taxes and rent. And some pays for Faiella's salary and substantial benefits.

The creation of such subcorporations isn't unusual. Across the country, economic development agencies routinely farm out tasks to shield the parent corporations from liability in the event of lawsuits or loan defaults.

What was unusual in Newark's case was the complete legal separation of the companies, said Edward Rytter, the NEDC's former chairman and a retired vice president of Prudential Financial Inc.

"The NEDC didn't own them. The intent, though, was that the NEDC would control them, and that got changed," said Rytter, who was appointed chairman in 1999. "I wasn't happy about it. I didn't think it was the right thing to do. But it was already done when I got there."

Several other board members did not return calls for comment about Faiella. Former trustee John Petillo, until February the president of the University of Medicine and Dentistry of New Jersey, declined to comment.

CITY'S LOST ASSETS

Faul, Faiella's lawyer, said NEDC board members were removed as trustees from the affiliated companies at their request around 1993 to "further distance and insulate NEDC from any liability."

At the time, the NEDC was in the third year of a nasty court fight with a Newark businessman, Charles Geyer, over the financing of a building Geyer owned.

At least four of the affiliates, however, were separated from NEDC influence five years earlier than Faul suggested. Corporate records show that in June 1988, Faiella and the other common trustees amended the certificates of incorporation for NEDC Riverfront Corp., NEDC Garage Corp., NEDC Waverly Corp. and NEDC Financial Management Corp.

Another critical change would come 12 years later, a time of increasing strife at the NEDC. Led by Petillo, then chairman of the New Newark Foundation, NEDC board members from the corporate sector wanted a greater voice in the city's redevelopment, and particularly over Newark's most valuable land, the Passaic River waterfront.

Faiella, Rytter said, wouldn't hear the executives out.

Faiella wanted an office tower to house the FBI along the river. The trustees favored a waterfront park. In the end, Faiella prevailed, and the deal was announced in the spring of 2000.

Months later, as the board grew more openly critical of Faiella, he eliminated the NEDC's -- and Newark's -- last claim to the affiliates' assets.

Those assets -- the garages, the warehouse and the millions in cash -- were to pass to the NEDC if the affiliates ceased operation. If the NEDC no longer existed, they would go to the city.

On June 28, 2000, Faiella and one other trustee, Robert Kroner, passed an amendment naming the new beneficiary another affiliate, NEDC Financial Management Corp. A third trustee was terminally ill and did not participate in the vote.

Kroner, now retired and living in Florida, did not return calls for comment.

Faul said the changes were made at all of the corporations "to be consistent."

"The assets ... are pledged to the other related entities," Faul wrote. "They would not belong to the city of Newark, any public agency or any individual."

Several current and former council members insisted they should belong to the city.

"These subentities were created

with an express purpose in mind: to help the city make some money," former

North Ward Councilman Anthony Carrino said. "These assets should absolutely be under the auspices of some quasi-city agency."

Current council members Augusto Amador and Luis Quintana expressed similar concerns, saying the issue

is at the heart of their opposition to a proposal by Mayor Sharpe James to entrust two newly created nonprofit groups with disbursing \$80 million in city funds for redevelopment projects.

The plan was reconstituted last month, with \$33.5 million to be spent directly from the municipal budget, after the state Division of Local Government Services ordered city leaders to hold off on the proposal. The state has since ordered the city to put that plan on hold, too.

Amador said the 2001 audit showed the need for more oversight of nonprofit agencies that control city money.

"We don't want that kind of thing to happen again," he said.

The audit, conducted by certified public accountant Keith Balla, identified several additional "areas of concern," among them the failure of NEDC Riverfront Corp. to repay the city \$1.8 million it had borrowed 14 years earlier to oversee construction of a pedestrian walkway over Raymond Boulevard.

Only after the accounting firm alerted the city to the delinquency did Riverfront pay back the debt, which had climbed to \$2.9 million with interest.

In another instance, Balla found, Riverfront shorted the city \$429,000 in payments in lieu of taxes on a garage it owns beneath the Legal Center.

HERO OR VILLAIN?

The NEDC, credited with bringing billions of dollars of investment into Newark since its creation in 1964, wouldn't survive the furor over Faiella's claim on the sub-corporations and their assets.

Even before the audit's conclusion, the City Council, with the agreement of the mayor, suspended the NEDC's funding and seized \$4.3 million in its accounts. The agency would linger in name only until last year, when it was dissolved.

James did not respond to requests for an interview. City Business Administrator Richard Monteilh, however, defended Faiella and his stewardship of the firms.

Monteilh became a trustee of the companies in 2002, shortly after beginning his second stint in the James administration. Also added as a trustee that year was Harold Lucas, the former head of the Newark Housing Authority.

In addition to Faiella, the other trustees are William Eaton and Raymond Brown, each of whom has served as Faiella's personal lawyer. Eaton could not be reached for comment. Brown did not return calls.

Monteilh said the companies have funded -- or in some cases partly funded -- development studies the city could not otherwise afford. He cited a study on expanding Minish Park along the Passaic River and several redevelopment plans for the Springfield Avenue corridor.

"They've been critical to us," Monteilh said.

Cash grants distributed by the affiliates include \$1.6 million to Community Movie Corp., the nonprofit operator of a movie theater on Springfield Avenue; \$450,000

to the New Jersey Symphony Orchestra Youth Cultural Program, which benefits inner-city kids; and \$1.5 million to

the Local Initiative Support Corp.,

which provides grants to rehabilitate Newark homes.

As a percentage of total revenues, the affiliates' contributions vary from year to year.

In the fiscal year ended June 30, 2004, for example, contributions of \$2.2 million amounted to 88 percent of combined revenues, according to tax forms and corporate financial statements.

The year before, however, the affiliates gave away just 26 percent of their revenues, even with \$8.8 million in cash on hand. A year earlier still, the affiliates paid out even less -- just under 6 percent of their revenues.

Much about the corporations' finances remains unclear. In any given year, millions of dollars are transferred among the affiliates without explanation on tax documents.

Monteilh said his position as a trustee has given the city some say in how the affiliates spend their money. But Faiella is under no obligation to replace Monteilh with his successor as business administrator in the Booker administration.

Marcus Owens, a former head of the charities division at the Internal Revenue Service, said that while Faiella's separation of the affiliates from the NEDC seems to be a "cozy deal," it doesn't appear to skirt federal laws.

But Owens, now a partner at a Washington, D.C., law firm, questioned Faiella's generous salary and benefit package. Under IRS rules, charities may pay only "reasonable compensation" for the amount of time an executive puts into a job.

In tax forms, Faiella said he spends

35 hours per week working for NEDC Riverfront and 10 more hours per week

on the business of two other nonprofit affiliates. Tax forms for the remaining corporations, all for-profit, are not public.

Faiella earned \$204,000 in salary

and benefits from the affiliates in 2004, according to his tax returns. But he also continues to work as a lawyer and development consultant, employment that grossed him an additional \$461,000 in 2004, his returns show.

Owens said the amount of income Faiella earned from legal and consulting work suggests one of two things: Either Faiella is overstating his time commitment to the corporations "or he's a hero worker and should get a medal."

"It sounds like he might have a salary not being fully earned," Owens said. "The smoke suggests there's a fire somewhere."

Staff writer George E. Jordan contributed to this report.

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