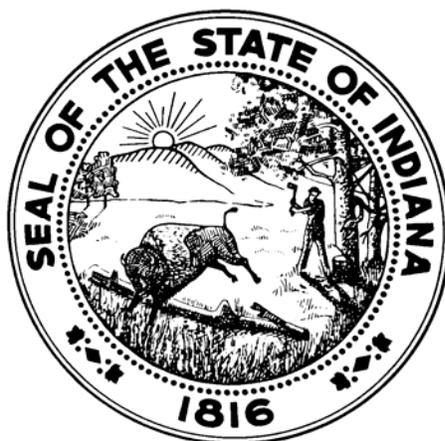


STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

AUDIT REPORT
OF

CITY CONTROLLER
CITY OF FORT WAYNE
ALLEN COUNTY, INDIANA

January 1, 2006 to December 31, 2006



FILED
09/20/2007

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CITY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Controller	Patricia A. Roller	01-01-06 to 12-31-07
Mayor	Graham Richard	01-01-04 to 12-31-07
Director of the City Utilities and Public Works	Gregory Meszaros	01-01-06 to 12-31-07
Co-Directors of Public Safety	Timothy Davie Russell York	01-01-06 to 12-31-07 01-01-06 to 12-31-07
President of the Common Council	Dr. John Crawford Donald Schmidt	01-01-06 to 12-31-06 01-01-07 to 12-31-07



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Web Site: www.in.gov/sboa

TO: THE OFFICIALS OF THE CITY OF FORT WAYNE

We have audited the records of the City Controller for the period from January 1, 2006 to December 31, 2006, and certify that the records and accountability for cash and other assets are satisfactory to the best of our knowledge and belief, except as stated in the Audit Results and Comments. The financial transactions of this office are reflected in the Annual Report of City of Fort Wayne CAFR for the year 2006.

STATE BOARD OF ACCOUNTS

June 27, 2007

CITY CONTROLLER
CITY OF FORT WAYNE
AUDIT RESULTS AND COMMENTS

HARRISON SQUARE PROPERTY PURCHASES

The Harrison Square project is a \$125 million public-private venture which will include condominiums, retail space, a minor league baseball stadium and a parking garage. The Redevelopment Commission closed on the purchase of 6 commercial and 26 residential properties between October 18, 2006 and May 21, 2007, to be used for the Harrison Square downtown redevelopment project. Net expenditures for these purchases amounted to \$7,964,796 (\$5,264,218 from the Jefferson Pointe Tax Incremental Financing (TIF) Fund and \$2,700,578 from the 2005 CEDIT Redevelopment Bond Fund). We noted the following regarding these purchases:

Property Purchases and Appraisals

The Redevelopment Commission authorized Department of Redevelopment employees or their agents (Summit Development Corporation) to purchase above said properties at amounts exceeding appraised or estimated appraised values during executive sessions in 2006. Executive sessions are non-public meetings of the Redevelopment Commission held for strategic purposes. The targeted purchase price of the properties was determined by the square footage of land. The Redevelopment Commission determined a value per square foot of land using prior purchases of land, other developments, and recent downtown developments including the Grand Wayne Center and Allen County Public Library.

The Summit Development Corporation (Summit), an Indiana non-profit corporation, was established by the City of Fort Wayne for the purpose of economic development. Mark Becker, Deputy Mayor of the City of Fort Wayne, is President of Summit. Summit is reported in the City of Fort Wayne's financial statements as a discretely presented component unit of the City of Fort Wayne. The Summit Development Corporation entered into an agreement on May 31, 2006, with Martin Goldstine Knapke Group, Inc., to establish Three Rivers Development Company, LLC., to acquire certain real estate in the City of Fort Wayne as listed in exhibit A. Exhibit A has since been identified as "Harrison Square." Three Rivers Development Company, LLC., was to option, acquire and hold the above real estate until otherwise directed by Summit and, upon direction of Summit, transfer all interests in Three Rivers Development Company, LLC., to Summit or its nominee (Redevelopment Commission).

The Redevelopment Commission authorized the purchase of the properties and the purchase price when they approved the claims for payment. These actions were subsequently ratified by the Redevelopment Commission passing Resolution 2007-37 at the June 18, 2007, public meeting.

The Redevelopment Commission purchased the above properties prior to obtaining two independent appraisals to determine the fair market value. The Redevelopment Commission has subsequently obtained two appraisals for the properties. For the residential properties, the purchase price exceeded the average of the two appraisals by a combined total of \$1,025,030. The subsequent appraisals for the commercial properties excluded fixtures, business relocation, and other intangibles; therefore, we could not compare actual purchase prices to appraisal averages.

Indiana Code 36-7-14-19(b) states in part: "(b) The redevelopment commission shall first approve and adopt a list of the real property and interests in real property to be acquired and the price to be offered to the owner of each parcel of interest. The prices to be offered may not exceed the average of two (2) independent appraisals of fair market value procured by the commission except that appraisals are not required in transactions with other governmental agencies. . . . The prices indicated on the list may not be exceeded unless specifically authorized by the commission or ordered by a court in condemnation proceedings. . . . Appraisals made under this section are for the information of the commission and are not open for public inspection."

CITY CONTROLLER
CITY OF FORT WAYNE
AUDIT RESULTS AND COMMENTS
(Continued)

Indiana Code 5-14-1.5-6.1(b) states in part: "Executive sessions may be held only in the following instances: . . . (2) For discussion of strategy with respect to any of the following: . . . (D) The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties."

Use of TIF Fund

Five of the thirty-two properties were purchased from the Jefferson Pointe TIF Fund. These five properties were outside the boundaries of the TIF District at the time of purchase. Closing dates for the properties purchased ranged from December 8, 2006 to February 27, 2007. On May 21, 2007, the City expanded the TIF District to include the Harrison Square project area.

In establishing the purposes for which property tax proceeds allocated to a redevelopment district may be expended, Indiana Code 36-7-14-39(b)(2)(J) states in part: "Pay expenses incurred by the redevelopment commission for local public improvements that are in the allocation area or serving the allocation area."

Council Approval

City Council did not approve or subsequently ratify the property purchases. Fort Wayne Municipal Code Sections 37.17 and 37.19 require, respectively, City Council approval or subsequent ratification of purchases in excess of \$100,000 and purchases of real estate. The ordinances do not exclude any departments or funds. If they do not apply to certain departments or funds, the City should clarify the ordinances to reflect those exceptions.

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

APPROPRIATIONS

The records presented for audit indicated the following expenditures in excess of budgeted appropriations:

<u>Fund</u>	<u>Excess Amount Expended</u>
CEDIT	<u>\$ 5,171,540</u>

Indiana Code 6-1.1-18-4 states in part: ". . . the proper officers of a political subdivision shall appropriate funds in such a manner that the expenditures for a year do not exceed its budget for that year as finally determined under this article."

CITY CONTROLLER
CITY OF FORT WAYNE
AUDIT RESULTS AND COMMENTS
(Continued)

CREDIT CARDS (P-CARDS)

The Civil City, Park and City Utilities are using credit cards (P-Cards) for travel purposes and also for smaller dollar purchases. We noted that they are not always complying with the following sections of their P-Card Policy and Procedure Manual:

(10) Ordering and Receipt of Materials and Services

(11) Tax Exemption

(13) Documentation

A similar comment appeared in prior Report B27344.

The State Board of Accounts will not take exception to the use of credit cards by a governmental unit provided the following criteria are observed:

Credit cards should not be used to bypass the accounting system. One reason that purchase orders are issued is to provide the fiscal officer with the means to encumber and track appropriations to provide the governing board and other officials with timely and accurate accounting information and monitoring of the accounting system.

Payment should not be made on the basis of a statement or a credit card slip only. Procedures for payments should be no different than for any other claim. Supporting documents such as paid bills and receipts must be available. Additionally, any interest or penalty incurred due to late filing or furnishing of documentation by an officer or employee should be the responsibility of that officer or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

CONFLICT OF INTEREST

The Internal Audit Department sent out, via email, requests for Conflict of Interest Disclosures to numerous City employees which included employees in the following departments: Controller, Law, Internal Audit, and Purchasing. All other Departmental Directors and City employees with prior year Conflict of Interest Disclosures on file were also emailed a request. All responses were to be collected and reviewed by the Law Department.

There were numerous employees that were on the list provided by Internal Audit that did not respond to the information requested. It is not clear what follow up effort was made by the Law Department to assure that all of the employees respond to the request.

One of the nonresponders was Douglas Call, the owner of D & B Lawncare, who is also a Fire Department employee. D & B Lawncare also employs other Fire Department employees, but only one Conflict of Interest Disclosure was filed by Mark Schroeder as an employee of D & B Lawncare and the City. D & B Lawncare provided services to the City in the amount of \$290,264 in 2006.

More effort by individual employees and the City needs to be made to ensure that the proper Conflict of Interest Disclosures are filed annually.

CITY CONTROLLER
CITY OF FORT WAYNE
AUDIT RESULTS AND COMMENTS
(Continued)

A similar comment appeared in prior Report B27344.

Indiana Code 35-44-1-3 states in part:

"(a) A public servant who knowingly or intentionally: (1) has a pecuniary interest in; or (2) derives a profit from; a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony."

"(c) This section does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served . . . (3) if the public servant: (A) is an elected public servant . . . and (B) makes a disclosure under subsection (d)(1) through (d)(6). . . ."

"(d) A disclosure required by this section must: (1) be in writing; (2) describe the contract or purchase to be made by the governmental entity; (3) describe the pecuniary interest that the public servant has in the contract or purchase; (4) be affirmed under penalty of perjury; (5) be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract or purchase; (6) be filed within fifteen (15) days after final action on the contract or purchase with: (A) the state board of accounts; and (B) . . . the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase. . . ."

"(g) A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of: (1) the public servant; or (2) a dependent of the public servant who: (A) is under the direct or indirect administrative control of the public servant; or (B) receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant."

"(k) As used in this section, 'dependent' means any of the following: (1) The spouse of a public servant. (2) A child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is: (A) unemancipated; and (B) less than eighteen (18) years of age. (3) Any individual more than one-half (1/2) of whose support is provided during a year by the public servant."

1925 POLICE PENSION PAYMENTS

There were six 1925 Converted Police Pensioners that were paid in amounts not in accordance with Indiana Code 36-8-8 for the 1977 Police Officers' and Firefighters' Pension and Disability Fund. The Police Pension Secretary calculated the corrections for the overpayments and the underpayments which occurred within the time period of January 2000 until May 2007. The Pensioners will repay the City for any overpayments they have received and the City will repay any underpayments to the Pensioners at the end of June 2007.

Indiana Code 36-8-6-3(2) states in part: "The Secretary shall keep a correct statement of the accounts of each member with the fund."

Governmental units should collect any overpayments made. (Uniform and Compliance Guidelines Manual for Cities and Towns, Chapter 7)

CITY CONTROLLER
CITY OF FORT WAYNE
AUDIT RESULTS AND COMMENTS
(Continued)

DEPARTMENTAL RECEIPT DEPOSITS

We noted instances where receipts were remitted to the Controller's Office for deposit later than two business days after receipt from the following departments:

Fire Department
C & ED Zoning

A similar comment appeared in prior Report B27344.

Indiana Code 5-13-6-1(d) states in part: "A city or a town shall deposit funds not later than the next business day following the receipt of the funds in depositories selected by the city or town as provided in an ordinance adopted by the city or the town and approved as depositories of state funds."

CITY CONTROLLER
CITY OF FORT WAYNE
EXIT CONFERENCE

The contents of this report were discussed on June 27, 2007, with Patricia A. Roller, Controller; Valerie Ahr, Deputy Controller; and Lynn Trittipo, Director of Internal Audit. The official response has been made a part of this report and may be found on pages 10 through 12.



CITY OF FORT WAYNE

GRAHAM RICHARD, MAYOR

August 16, 2007

Mr. Bruce Hartman, CPA
State Board of Accounts
302 W. Washington St., Room E418
Indianapolis, IN 46204-2765

HARRISON SQUARE PROPERTY PURCHASES

A. Property Purchases and Appraisals

We agree with your audit position that the procedure used by the Redevelopment Commission (the "Commission") to purchase land for the Harrison Square project (the "Project") was appropriate and in conformity with state law. For clarification, we would add only that, as reflected in documents previously presented to you, the residential and commercial properties considered together were purchased for \$29.19 per square foot. That figure compares well with the appraisals relied on by the Commission of adjacent properties that demonstrated a range of \$20.81 to \$34.82, depending on improvements.

B. Use of TIF Fund

We agree with your audit position that I.C. 36-7-14-39(b)(2)(J) allows the Commission to use TIF funds to purchase property outside the TIF allocation area provided the purchase property serves the TIF allocation area, as was the case here. One of the existing TIF areas served by the Project was the Jefferson Illinois Economic Development Area (the "JP TIF"), which was amended in 2005 to include Jefferson Blvd. from Jefferson Pointe shopping mall east to S. Calhoun St. north to Washington Blvd. west back to Jefferson Blvd. This route is a major corridor connecting the Jefferson Pointe mall and the core of downtown Fort Wayne. Four of the commercial properties purchased with funds from the JP TIF directly abut Jefferson Blvd. These properties are planned to be the site of the retail and condominium structures for the Project, which will serve the JP TIF, among other ways, by providing additional commercial and pedestrian activity to the JP TIF and enhancing the appearance of Jefferson Blvd. The other property purchased with JP TIF funds (1202 S. Harrison St.) is adjacent to property on Jefferson Blvd. purchased previously by the Commission, which property is commonly referred to as the Belmont Beverage and Christoff property, the site of the hotel to be developed within the Project. That property will be the site of the parking garage for the Project and will be connected to the hotel, which will be on property directly abutting Jefferson Blvd., thereby serving the JP TIF.

The "serving" concept is used commonly and appropriately around the state to purchase properties using TIF funds for public improvements outside the TIF areas which provided the funds. The redevelopment statute does not provide limits as to what may be

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deemed to be “serving” an area. Given the nature of the Project, acquiring the property with JP TIF funds clearly is a reasonable exercise of the power vested in the Commission by the General Assembly. The Commission has employed this concept in the past several times. Examples include, among others:

1. In 2000 and 2001, use of JP TIF funds for improvements to traffic signalization and the construction of a sound wall along Jefferson Blvd. prior to the amendment of the JP TIF area that added Jefferson Blvd. to the JP TIF area.
2. In 1998, use of Baer Field TIF area funds to pay for improvements to water and sewer lines to the airport area, where those lines were outside the Baer Field TIF area.

C. Council Approval

We agree with your audit position that the City’s purchasing ordinance would be clearer if it expressly excluded the departments, such as the Department of Redevelopment, that are not subject to the City Council purchasing approval process. The powers of the Commission are set forth in I.C. 36-7-14-1 et seq. and are supplemented at I.C. 36-7-25-1 et seq. (the “Redevelopment Statute”). The Redevelopment Statute specifies which actions of the Commission require approval by the City Council. Those include establishment of redevelopment and economic development areas and the issuance of bonds in the amount of \$3 million or greater. The ordinance requiring City Council approval of land acquisitions and contracts in excess of \$100,000 does not apply to the Commission. City Council cannot impose an approval requirement on the Commission because the Commission’s powers and authorities are created specifically by state law and cannot be limited by a local ordinance.

The following are just some examples of Commission contracts or purchases for projects in excess of \$100,000 that proceeded without specific contract or bid approval from Council and without comment from the State Board. In each instance, the Commission bid and let the specific construction contracts without further action by City Council.

1. 1999-2000 Summit Industrial Park II.
2. 2003 Grand Wayne Center Expansion.
3. 2001-2005 Southtown Centre.
4. 2004-2005 Adams Township Industrial Area.

APPROPRIATIONS

Even though the use of these CEDIT dollars was approved by all proper authorities including City Council, a separate appropriation ordinance was not taken to City Council. The City will ensure with any future appropriations that they are approved with an appropriation ordinance.

CREDIT CARDS (P-CARDS)

The Controller's Office will work with the Purchasing Department in order to ensure the City is compliant with the use of the p-cards. We will ensure that supporting documentation and approvals are obtained for each transaction just as we would with any other claim.

CONFLICT OF INTEREST

The City of Fort Wayne does issue conflict of interest forms annually to department heads. It is the responsibility of each department head to ensure any employee who may have a conflict report it to the proper authority. We will look into the process and identify better practices to ensure any possible conflict of interest is documented.

1925 POLICE PENSION PAYMENTS

The Police Pension Secretary has repaid the (3) pensioners that were found to be underpaid. The City is working with the other (3) pensioners to collect the dollars that are owed to the City since they were overpaid.

DEPARTMENTAL RECEIPT DEPOSITS

The receipt process is currently being evaluated. The Controller's Office will develop written procedures for receipts received from all departments regardless of their location. Internal Audit has provided the Controller's Office with information they had prepared several years ago. We will use that information as a basis for current procedures. Once again, the implementation of the MUNIS Financial System will require these processes and procedures to be developed, fine-tuned, documented and implemented.

Sincerely,



Patricia A. Roller, CPA
City Controller