

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

EXAMINATION REPORT
OF
FALLING WATERS CONSERVANCY DISTRICT
PORTER COUNTY, INDIANA
January 1, 2005 to December 31, 2007



FILED
01/20/2009

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OFFICIALS

Office

Official

Term

Chairman of the Board
of Directors

Anthony Floramo

01-01-05 to 12-31-08



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE FALLING WATERS CONSERVANCY
DISTRICT, PORTER COUNTY, INDIANA

We have examined the financial information presented herein of the Falling Waters Conservancy District (District), for the period of January 1, 2005 to December 31, 2007. The District's management is responsible for the financial information presented herein. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the financial information presented herein and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, the financial information referred to above presents fairly, in all material respects, the financial information of the District for the years ended December 31, 2005, 2006 and 2007, based on the criteria set forth in the uniform compliance guidelines established by the Indiana State Board of Accounts.

The Schedule of Capital Assets and Schedule of Long-Term Debt, as listed in the Table of Contents, are presented for additional analysis and are not required parts of the basic financial information. They have not been subjected to the examination procedures applied to the basic financial information and, accordingly, we express no opinion on them.

STATE BOARD OF ACCOUNTS

December 29, 2008

FALLING WATERS CONSERVANCY DISTRICT
SCHEDULES OF RECEIPTS, DISBURSEMENTS, AND CASH AND INVESTMENT BALANCES
ALL GOVERNMENTAL FUND TYPES
As Of And For The Year Ended December 31, 2005

	Bond and Interest	Debt Service Reserve	Expense	Improvement	Capitalized Interest	Cost of Issuance	Totals
Cash and investments, January 1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating receipts:							
Miscellaneous	43	7,354	29	-	8,264	11	15,701
Operating disbursements:							
Legal and professional	-	-	5,500	-	-	-	5,500
Bond issuance costs	-	-	-	-	-	354,644	354,644
Capital outlay	-	-	-	7,666,000	-	-	7,666,000
Debt service:							
Interest and paying agent fees	-	-	3,000	-	-	-	3,000
Total operating disbursements	-	-	8,500	7,666,000	-	354,644	8,029,144
Excess (deficiency) of operating receipts over (under) operating disbursements	43	7,354	(8,471)	(7,666,000)	8,264	(354,633)	(8,013,443)
Other financing sources and (uses):							
Bond proceeds	-	843,600	10,000	7,666,000	952,940	355,123	9,827,663
Transfers in	5,000	-	-	-	-	-	5,000
Transfers out	-	-	-	-	(5,000)	-	(5,000)
Total other financing sources (uses)	5,000	843,600	10,000	7,666,000	947,940	355,123	9,827,663
Excess (deficiency) of receipts and other financing sources sources over disbursements and other financing uses	5,043	850,954	1,529	-	956,204	490	1,814,220
Cash and investments, December 31	\$ 5,043	\$ 850,954	\$ 1,529	\$ -	\$ 956,204	\$ 490	\$ 1,814,220

The accompanying notes are an integral part of the financial information.

FALLING WATERS CONSERVANCY DISTRICT
SCHEDULES OF RECEIPTS, DISBURSEMENTS, AND CASH AND INVESTMENT BALANCES
ALL GOVERNMENTAL FUND TYPES
As Of And For The Year Ended December 31, 2006

	General	Bond and Interest	Debt Service Reserve	Expense	Improvement	Capitalized Interest	Cost of Issuance	Totals
Cash and investments, January 1	\$ -	\$ 5,043	\$ 850,954	\$ 1,529	\$ -	\$ 956,204	\$ 490	\$ 1,814,220
Operating receipts:								
Charges for services	12,200	-	-	-	-	-	-	12,200
Tap on fees	42,000	-	-	-	-	-	-	42,000
Miscellaneous	5,292	626	38,443	70	14	25,806	8	70,259
Total operating receipts	59,492	626	38,443	70	14	25,806	8	124,459
Operating disbursements:								
Sanitation	54,978	-	-	-	-	-	-	54,978
Miscellaneous	1,088	-	-	-	-	-	-	1,088
Debt service:								
Interest and paying agent fees	-	598,290	-	-	-	6,000	-	604,290
Total operating disbursements	56,066	598,290	-	-	-	6,000	-	660,356
Excess (deficiency) of operating receipts over (under) operating disbursements	3,426	(597,664)	38,443	70	14	19,806	8	(535,897)
Other financing sources and (uses):								
Advances from property developer	4,000	-	-	-	-	-	-	4,000
Transfers in	-	608,227	-	-	498	-	-	608,725
Transfers out	-	-	(9,937)	-	-	(598,290)	(498)	(608,725)
Total other financing sources (uses)	4,000	608,227	(9,937)	-	498	(598,290)	(498)	4,000
Excess (deficiency) of receipts and other financing sources over disbursements and other financing uses	7,426	10,563	28,506	70	512	(578,484)	(490)	(531,897)
Cash and investments, December 31	\$ 7,426	\$ 15,606	\$ 879,460	\$ 1,599	\$ 512	\$ 377,720	\$ -	\$ 1,282,323

The accompanying notes are an integral part of the financial information.

FALLING WATERS CONSERVANCY DISTRICT
SCHEDULES OF RECEIPTS, DISBURSEMENTS, AND CASH AND INVESTMENT BALANCES
ALL GOVERNMENTAL FUND TYPES
As Of And For The Year Ended December 31, 2007

	General	Bond and Interest	Debt Service Reserve	Expense	Improvement	Capital Charge Reserve	Capitalized Interest	Totals
Cash and investments, January 1	\$ 7,426	\$ 15,606	\$ 879,460	\$ 1,599	\$ 512	\$ -	\$ 377,720	\$ 1,282,323
Operating receipts:								
Charges for services	36,300	-	-	-	-	-	-	36,300
Tap on fees	15,000	-	-	-	-	-	-	15,000
Capital charge	-	6,880	-	-	-	275,000	-	281,880
Miscellaneous	10,111	1,055	40,801	7	26	-	2,607	54,607
Total operating receipts	61,411	7,935	40,801	7	26	275,000	2,607	387,787
Operating disbursements:								
Sanitation	49,684	-	-	-	-	-	-	49,684
Legal and professional	13,554	-	6,580	-	-	-	-	20,134
Miscellaneous	4,280	-	-	-	-	-	-	4,280
Debt service:								
Principal	-	5,000	-	-	-	-	-	5,000
Interest and paying agent fees	-	699,125	7,969	-	-	-	6,000	713,094
Total operating disbursements	67,518	704,125	14,549	-	-	-	6,000	792,192
Excess (deficiency) of operating receipts over (under) operating disbursements	(6,107)	(696,190)	26,252	7	26	275,000	(3,393)	(404,405)
Other financing sources and (uses):								
Advances from property developer	5,000	187,595	-	-	-	-	-	192,595
Repayment of advances	(5,000)	-	-	-	-	-	-	(5,000)
Transfers in	-	688,863	-	-	-	-	-	688,863
Transfers out	-	-	(39,536)	-	-	(275,000)	(374,327)	(688,863)
Total other financing sources (uses)	-	876,458	(39,536)	-	-	(275,000)	(374,327)	187,595
Excess (deficiency) of receipts and other financing sources over disbursements and other financing uses	(6,107)	180,268	(13,284)	7	26	-	(377,720)	(216,810)
Cash and investments, December 31	\$ 1,319	\$ 195,874	\$ 866,176	\$ 1,606	\$ 538	\$ -	\$ -	\$ 1,065,513

The accompanying notes are an integral part of the financial information.

FALLING WATERS CONSERVANCY DISTRICT
NOTES TO FINANCIAL INFORMATION

Note 1. Introduction

The District was established under the laws of the State of Indiana. The District provides the following services: sanitary sewer collection and treatment, drinking water distribution, and storm water management.

The number of members of the Board of Directors of the District was set in the court order establishing the District. The initial Board of Directors was appointed by the Board of County Commissioners. Subsequent vacancies due to expiration of terms or resignations will be filled by elections conducted at the annual meetings.

Note 2. Fund Accounting

The District uses funds to report on its cash and investments and the results of its operations on a cash basis. Fund accounting is designed to demonstrate legal compliance and to aid financial management by segregating transactions related to certain governmental functions or activities.

Note 3. Budgets

The operating budget is initially prepared and approved at the local level. In addition, funds for which property taxes are levied are subject to final approval by the Indiana Department of Local Government Finance.

Note 4. Deposits and Investments

Deposits, made in accordance with Indiana Code 5-13, with financial institutions in the State of Indiana at year end were entirely insured by the Federal Depository Insurance Corporation or by the Indiana Public Deposit Insurance Fund. This includes any deposit accounts issued or offered by a qualifying financial institution.

State statute (IC 5-13-9) authorizes the District to invest in securities including, but not limited to, federal government securities, repurchase agreements, and certain money market mutual funds. Certain other statutory restrictions apply to all investments made by local governmental units.

Note 5. Subsequent Events

Special Benefits Tax

The District established a Special Benefits property tax levy for 2006 assessed valuations payable in 2007. Pursuant to State statute, counties were required to reassess property values prior to billing taxes in 2007. Due to significant delays in the reassessment process, the District did not receive 2007 property taxes until 2008.

FALLING WATERS CONSERVANCY DISTRICT
NOTES TO FINANCIAL INFORMATION
(Continued)

Exceptional Benefits Tax

An exceptional benefits tax assessment for each of the 407 lots of the Falling Waters Conservancy District was established by court order on August 8, 2008. Commencing with the real estate property tax bills payable in 2008, the annual tax rate will be \$1,753 per lot based upon the amortization of the exceptional benefit received by each lot over the life expectancy of the Conservancy District improvements. The tax will be collected through the real estate property tax billing process of the Porter County Auditor and Treasurer.

Transfer of Ownership of Water Mains

On February 4, 2008, the District transferred ownership of their water main extensions and appurtenances to the Indiana-American Water Company, Inc. (IAWC). Upon conveyance to the utility, the mains, including all mains, valves, fire hydrants, and other equipment, became the sole property of IAWC. IAWC is responsible for all maintenance and repairs.

Refund of Advance

Indiana American Water Company, Inc. (IAWC) will establish a "Refundable Advance Account" in an amount equal to the cost of the main extensions transferred to them from the District. IAWC agreed that for a period of 10 years, for each customer which is directly connected to the main extension, IAWC will make a refund to the District. The refund amount is the amount by which three times the estimated annual revenue to IAWC from each new customer exceeds IAWC's investment in connecting the new customer. The total amount refunded by IAWC under the agreement will not exceed the cost of the main extensions.

Advances From Developer

Due to the amount of delinquent sewer charges, the failure of the District to collect the \$90 per lot per month local capital charges, and the delay in receiving taxes from the County Auditor, funds were not available to pay all of the operating expenses and the principal and interest due on the revenue bonds. To meet these obligations, the developer of the property which encompasses the District advanced the following amounts to the District:

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>Totals</u>
Cash advances (net of amounts repaid)	\$ 4,000.00	\$ -	\$ 57,173.35	\$ 61,173.35
Operating expenses paid by Floramo Partners, Inc.	8,709.02	-	22,668.59	31,377.61
Per lot capital charge paid in excess of the amount owed by Floramo Partners, Inc.	-	187,595.00	-	187,595.00
Advance of one-half of exceptional benefits tax amount owed by Floramo Partners, Inc.	-	-	228,224.50	228,224.50
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Totals	<u>\$ 12,709.02</u>	<u>\$ 187,595.00</u>	<u>\$ 308,066.44</u>	<u>\$ 508,370.46</u>

FALLING WATERS CONSERVANCY DISTRICT
 SUPPLEMENTARY INFORMATION
 SCHEDULE OF CAPITAL ASSETS
 For The Year Ended December 31, 2007

Capital assets are reported at actual or estimated historical cost based on appraisals or deflated current replacement cost. Contributed or donated assets are reported at estimated fair value at the time received.

		Ending Balance	
Business-type activities:			
Capital assets, not being depreciated:			
Land	\$	1,600,000	
Infrastructure		2,908,643	*
Buildings		1,850,000	
Improvements other than buildings		1,200,000	
Machinery and equipment		102,500	
 Total business-type activities capital assets	 \$	 7,661,143	

*On February 4, 2008, the District transferred \$1,156,456 of their ownership interest in water main extensions and appurtenances to the Indiana-American Water Company, Inc.

FALLING WATERS CONSERVANCY DISTRICT
 SUPPLEMENTARY INFORMATION
 SCHEDULE OF LONG-TERM DEBT
 December 31, 2007

The District has entered into the following debt for the acquisition of the water distribution lines, wastewater treatment and collection system, and storm water system:

Description of Debt	Ending Principal Balance	Principal and Interest Due Within One Year
Revenue bonds:		
Conservancy District Bonds of 2005	\$ 9,985,000	\$ 703,775

FALLING WATERS CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS

PRESCRIBED FORMS

The following prescribed or approved forms were not in use:

General Form 352 - Receipt
General Form 353 - Check
General Form 354 - Claim
Utility Form 323 - Simplified Cash Journal - Municipal Sewage Utility
Utility Form 324 - Consumer's Ledger - Municipal Wastewater Utility

Officials and employees are required to use State Board of Accounts prescribed or approved forms in the manner prescribed. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

DEPOSITS

We noted that deposits were not made daily as required by state statute. In 2006, an average of 2 deposits per month were made. In 2007, an average of 2.6 deposits per month were made.

Indiana Code 5-13-6-1(c) states in part:

"All local officers . . . who collect public funds of their respective political subdivisions shall deposit funds not later than the business day following the receipt of funds on business days of the depository in the depository or depositories selected by the . . . local boards of finance. . . ."

ERRORS ON CLAIMS

The following deficiencies were noted on claims during the examination period:

1. Claims were not adequately itemized. Some invoices submitted for payment were not in the name of the District. These invoices were combined expenses of the District, the subdivision developer and the local homeowner's association.
2. Certification by the fiscal officer that the invoice was true and correct was not noted since prescribed claim forms were not used.
3. Board approval of claims was not noted in the minutes of the meetings of the Board of Directors.

Indiana Code 5-11-10-1.6 states in part:

"(b) As used in this section, 'claim' means a bill or an invoice submitted to a governmental entity for goods or services.

(c) The fiscal officer of a governmental entity may not draw a warrant or check for payment of a claim unless:

- (1) there is a fully itemized invoice or bill for the claim; . . .

FALLING WATERS CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS
(Continued)

- (4) the fiscal officer audits and certifies before payment that the invoice or bill is true and correct; and
- (5) payment of the claim is allowed by the governmental entity's legislative body or the board or official having jurisdiction over allowance of payment of the claim."

ANNUAL REPORTS

Annual reports of income and expenses to the court, as well as Special District Annual Reports (SDAR) to the Indiana State Board of Accounts, for 2005, 2006, and 2007, were not presented for examination.

Indiana Code 14-33-5-20 states in part:

"The board shall do the following: . . . (6) Make an annual report to the court of income and expenses."

Officials and employees are required to use State Board of Accounts prescribed or approved forms in the manner prescribed. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

Indiana Code 5-11-1-4(a) states:

"The state examiner shall require from every municipality and every state or local governmental unit, entity, or instrumentality financial reports covering the full period of each fiscal year. Except as provided by subsection (b), these reports shall be prepared, verified, and filed with the state examiner not later than thirty (30) days after the close of each fiscal year."

COLLECTION OF AMOUNTS DUE

Sewer Rate Ordinance 2005-01, approved August 31, 2005, set a Local Capital Charge of \$90 per lot per month, effective January 1, 2007. The ordinance states that, "Every freeholder shall be charged the applicable local capital charge per lot regardless of whether the freeholder is connected to the District's sanitary sewage system." This capital charge was never charged to, or collected from, any freeholders in the District. However, due to insufficient funds to meet obligations, the developer (owner of 261 lots in 2007) of the subdivision which encompasses the District paid an amount equal to the entire 2007 capital charge for every lot in the District. The amount paid in excess of what was owed for the lots still owned by the developer was \$187,595.

Governmental units have a responsibility to collect amounts owed to the governmental unit pursuant to procedures authorized by statute. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

FALLING WATERS CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS
(Continued)

RATES

The \$50 per home, per month sewer use charge provided for in Sewer Rate Ordinance 2005-01 is insufficient to meet operating expenses. The District owes the Developer over \$500,000 for operating expenses as well as capital charges and tax advances made to the District in order for the District to meet bond and interest obligations.

Indiana Code 14-33-5-21 states in part:

"(a) If the board issues revenue bonds for the collection, treatment, and disposal of sewage and liquid waste, the board may do the following:

- (1) Establish just and equitable rates and charges and use the same basis for the rates as provided in IC 36-9-23-25 through IC 36-9-23-29."

Indiana Code 36-9-23-25 states in part:

"(a) The municipal legislative body shall, by ordinance, establish just and equitable fees for the services rendered by the sewage works, and provide the dates on which the fees are due.

(b) Just and equitable fees are the fees required to maintain the sewage works in the sound physical and financial condition necessary to render adequate and efficient service. The fees must be sufficient to:

(1) pay all expenses incidental to the operation of the works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations;

(2) provide the sinking fund required by section 21 of this chapter;

(3) provide adequate money to be used as working capital; and

(4) provide adequate money for improving and replacing the works."

RISK OF LOSS

The District should ensure that it is adequately protected for all risks of loss. At this time, the District is insured with American Family Mutual Insurance Company under the Floramo Partners, Inc., policy. The District should obtain the necessary insurance in the name of the District.

Indiana Code 14-33-5-20 states in part:

"The board shall do the following: . . . (14) Insure property, personnel, and operations of the district against risks and in amounts that the board determines necessary to protect the district."

FALLING WATERS CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS
(Continued)

BOARD MEETINGS AND PUBLIC NOTICES

Proofs of publication of notices of the annual meetings of the District were not presented for examination. Other notices that were advertised were published in the Chesterton Tribune which has limited circulation. Outside of the Town of Chesterton, the Chesterton Tribune is available only by mail delivery.

In addition, minutes of the proceedings of the annual meetings did not include the dates, times, and places for the regular quarterly meetings of the Board of Directors. Public meetings were held to conduct the business of the District and minutes of the proceedings of these meetings were available; however, meetings were not always held quarterly as required.

Public notice of the date, time, and place of regular meetings, executive sessions, or rescheduled or reconvened meetings must be given at least 48 hours before the meeting (excluding Saturdays, Sundays, and legal holidays). Reconvened meetings may be held with less than 48 hours notice if the new date, time, and place is announced at the time of the original meeting and recorded in the minutes, and there is no change in the agenda. Public notice is given by posting a notice of the meeting at the office of the political subdivision and notifying all news media who have filed a written request to receive such notices. If an agenda is used, it should be posted at the entrance to the meeting place. Notice of regular meetings need be given only once each year unless the date, time or place is changed. In case of an emergency, the 48 hour requirement may be disregarded. [IC 5-14-1.5-5] (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 12)

Indiana Code 14-33-5-4 states in part:

"(b) Notice of the annual meeting of the district must be given by one (1) publication in a newspaper of general circulation in each county in the district . . ."

Indiana Code 14-33-5-13 states:

"The board shall by resolution fix the time for holding regular meetings, but the board shall meet at least quarterly each year.

CONFLICT OF INTEREST

Floramo Partners, Inc., constructed the utility infrastructure which was purchased by the District. Anthony Floramo was the Chairman of the Board of the Directors of the District, as well as the owner of Floramo Partners, Inc., at the time of the sale. Mr. Floramo's ownership of Floramo Partners, Inc., was acknowledged at the public meeting in which the purchase resolution was adopted. However, a Uniform Conflict of Interest Disclosure Statement does not appear to have been filed.

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. . . ."

FALLING WATERS CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS
(Continued)

(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).

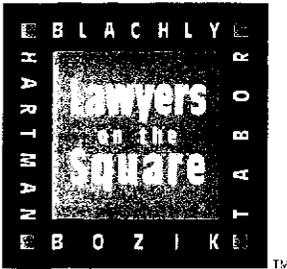
(d) A disclosure required by this section must: (1) be in writing; (2) describe the contract or purchase to be made by the governmental entity; (3) describe the pecuniary interest that the public servant has in the contract or purchase; (4) be affirmed under penalty of perjury; (5) be submitted to the 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 . . ."

FALLING WATERS CONSERVANCY DISTRICT
EXIT CONFERENCE

The contents of this report were discussed on December 29, 2008, with Anthony Floramo, Chairman of the Board of Directors; and David Hollenbeck, Attorney. The official response has been made a part of this report and may be found on pages 17 through 21.

The contents of this report were also discussed on December 30, 2008, with Peter Gutierrez, M.D., Board member.



BLACHLY, TABOR, BOZIK & HARTMAN, LLC

January 13, 2009

Mr. Bruce Hartman
State Examiner
Indiana State Board of Accounts
302 West Washington St. Room E418
Indianapolis, IN 46204-2765

David L. Hollenbeck
Thomas F. Macke
Randall J. Zromkoski
Richard J. Rupcich
Craig R. Van Schouwen
Patrick Lyp
Jeffrey S. Wrage

RE: **Falling Waters Conservancy District Audit Response**

Dear Mr. Hartman:

Anna M. Hearn
Tracey S. Wetzstein
Ethan S. Lowe
John R. Terpstra

I initiate this correspondence in my capacity as legal counsel to the Board of Directors to the Falling Waters Conservancy District. Your field examiner recently completed her audit of the conservancy district books and records for the period of January 1, 2005 through December 31, 2007. The exit conference convened on December 29, 2008. At the end of the exit conference, the conservancy district opted to file an official response to the results and comments contained in the audit findings. Please consider this correspondence as that response.

Glenn J. Tabor
James S. Bozik
Duane W. Hartman

1) PRESCRIBED FORMS

Quentin A. Blachly
(1934-1997)

As observed during the exit conference, the Falling Waters Conservancy District is a relatively new and small conservancy district providing sanitary sewer, drinking water and stormwater management to the Falling Waters Subdivision located in Porter County. Eventually the conservancy district will serve approximately four hundred customers. Currently, approximately fifty homes receive sanitary sewer and water service from the conservancy district. The developer remains the owner of approximately two hundred and sixty lots and has remained actively involved in the management of the conservancy district. The developer has advanced more than five hundred thousand dollars in support of the conservancy districts financial commitments and obligations. This is confirmed in note five of the "subsequent events" document distributed during the exit conference.

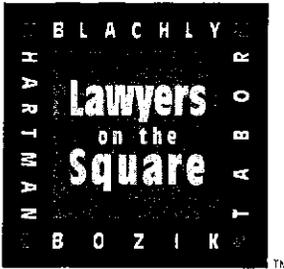
The developer continues to provide (free of charge) accounting and bookkeeping services to the conservancy district. In so doing, he utilized his own bookkeeping and accounting forms. As part of the exit conference, the developer was advised by your staff that specific forms must be utilized by local units of government. The developer is in the process of securing those forms and will utilize the proper forms.

56 South Washington, Suite 401
Valparaiso, IN 46383
219.464.1041 phone
219.464.0927 fax

2) DEPOSITS

Fort Wayne Office
260.459.3288

Regarding the audit comments concerning the regularity of deposits, failure to comply with the daily deposit requirement was inadvertent and unintended. The relatively small volume of deposits makes compliance with the daily deposit requirement cumbersome and inefficient. That having been said, the developer is committed to making deposits in compliance with Indiana Law and your auditors recommendations.



BLACHLY, TABOR, BOZIK & HARTMAN, LLC

Mr. Hartman/FWCD
January 13, 2009
Page Two

3) ERRORS ON CLAIMS

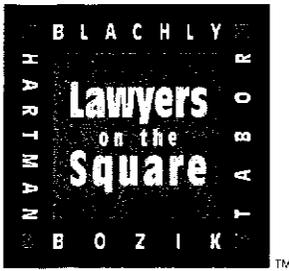
Your auditor found that some of the claims were not adequately itemized. There were also occasions when invoices contained work done for both the conservancy district and the homeowners association. An approved claim form containing the certification by the fiscal officer that the invoice was true and correct was not attached to all claims. That having been said, there was no finding that any claims were inappropriate or wrongfully paid. The developer will secure appropriate claim forms and attach claim forms to each invoice. Claims will also be formally approved at meetings of the Governing Board of the conservancy district.

4) ANNUAL REPORTS

The developer was unaware of the requirement that the conservancy district utilize a State Board of Accounts prescribed or approved form in completing the special district annual reports (SDAR). All of the accounting information was submitted for the audit but was not submitted to your agency in the form of the special district annual report. In discussions with your field examiner, the developer will complete the necessary reports and submit them to your agency. The annual reports required by IC 14-33-5-20 have also been filed with the circuit court.

5) COLLECTION OF AMOUNTS DUE

In lieu of collecting the \$90.00 per lot per month sanitary sewer and water capital charge contained in FWCD Sewer Rate Ordinance 2005-01 (approved August 31, 2005), the conservancy district secured approval from the Indiana Department of Local Government Finance to impose a "special benefits tax" for calendar year 2007. The "special benefits tax" was collected against the assessed valuation of all of the lots contained within the Falling Waters Subdivision. As such, the developer paid the "special benefits tax" on the two hundred and sixty lots which remain in his ownership and in addition thereto paid approximately \$1,087.00 which represented the shortfall in tax collections for 2007. These monies were used to pay the debt service payment owed on the indebtedness incurred by the conservancy district to acquire the sanitary sewer, water and stormwater infrastructure within the subdivision. For 2008, the conservancy district secured Porter Circuit Court approval for imposing an "exceptional benefits tax" on each lot in the subdivision. This tax will generate sufficient revenue to make the debt service payment for the conservancy district. Again, the developer will pay more than half of that tax assessment due to his remaining ownership of two hundred and sixty one lots. The exceptional benefits tax is assessed at the rate of \$1,753.00 per lot. All of this occurred in lieu of collecting the \$90.00 per lot per month charge contained in the Sewer Rate Ordinance. The Sewer Rate



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Ordinance will need to be modified and amended to reflect these changes.

6) RATES

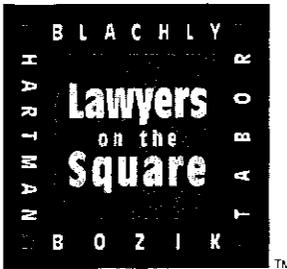
Your field examiner also found that the current \$50.00 per home, per month sanitary sewer charge is insufficient to meet the operating expenses of the conservancy district. Indeed, the developer has advanced over \$500,000.00 for operating expenses as well as capital charges and tax advances which he has made to the conservancy district in order for the conservancy district to meet bond and interest obligations. The Board of the conservancy district will address the inadequacy of the monthly sewer bill through consultation with Mr. Karl Cender the rate consultant employed by the conservancy district. I would anticipate that the district will respond to your audit finding by increasing the monthly charge made to conservancy district customers.

7) RISK OF LOSS

As observed in the audit findings, the developer has continued to ensure all of the conservancy district assets under his insurance policy. Field examiner recommends that the conservancy district acquire its own insurance. Obviously, the conservancy district has experienced significant savings through utilization of the developers overall insurance coverage. That having been said, the conservancy district will proceed to acquire its own insurance.

8) BOARD MEETINGS AND PUBLIC NOTICES

There were a number of issues raised regarding board meetings and public notices. Because of the small geographical area covered by the conservancy district and the relatively small number of constituents, the conservancy district has posted notices of meetings and activities within the subdivision and specifically at the guard house. Indeed, in 2005 there were a total of seventeen residents of the subdivision. Now that the subdivision population is increasing, the Board of Directors of the conservancy district is committed to implementing efforts to fully inform and notify all of the constituents through use of email and publication. An issue was raised concerning utilization of the Chesterton Tribune when legal notice and publication is required. The Chesterton Tribune is the only newspaper which meets the definition of having been "published" in Porter County. Matters related to adoption of the FWCD bond issue and the establishment of FWCD rates and charges for utility services require publication and notice pursuant to IC 5-3-1 which contains the publication requirement. The conservancy district was statutorily required to utilize the Chesterton Tribune for publication purposes regarding the bond issue and the establishment of rates and charges.



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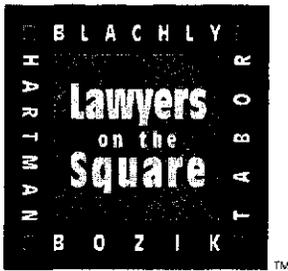
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The audit findings also make reference to IC 5-14-5.1-5 concerning the obligation to prepare and distribute meeting notices. That obligation is limited to those media outlets and individuals who comply with the law and file with the governmental unit a request to receive notice. The Falling Waters Conservancy District has received no requests requesting meeting notification.

9) CONFLICT OF INTEREST

The audit findings also reference the Indiana "Conflicts of Interest" Statute. Specific reference is made to the developer having conveyed the sewer, water and stormwater infrastructure to the conservancy district. The conveyance of the infrastructure was done in full and complete compliance with Indiana Law. The "Conflict of Interest" Statute is applicable when there is a pecuniary interest in a transaction. A "pecuniary interest" is defined in the statute as a transaction which results in an "ascertainable increase" in income or net worth. The conservancy district followed Indiana Law and had the sewer, water and stormwater infrastructure appraised and the conservancy district paid the average of the two appraisals. This resulted in the developer conveying the sewer, water and stormwater infrastructure at a loss. As such, there was no "ascertainable increase" in the income or net worth of the developer. The issues associated with a potential "conflict of increase" were repeatedly discussed and evaluated throughout the process. Indeed, the field examiner observes in the audit report that the topic was specifically discussed at public board meetings.

Furthermore, the intent to convey the sewer, water and stormwater infrastructure to the conservancy district was revealed, discussed and approved repeatedly. Conveyance of the infrastructure was originally presented to the Porter Circuit Court as part of the Petition of Creation of the Conservancy District which was filed in April, 2001. Conveyance of the infrastructure was publicly discussed and revealed to the Porter Circuit Court at the first hearing on creation of the conservancy district which occurred on June 18, 2001. Conveyance of the infrastructure was also publicly discussed at the IDNR (Division of Hearings) public hearing on the proposed conservancy district which was held on August 3, 2001. The developers intent to convey the infrastructure to the conservancy district is documented and approved as part of the staff report which IDNR submitted to the Porter Circuit Court on September 7, 2001. The Porter Circuit Court approved conveyance of the infrastructure to the conservancy district as part of the court order approving the conservancy district which was entered on September 5, 2003. On October 7, 2003 the Board of County Commissioners appointed the developer to the Board of Directors of the conservancy district with full knowledge that the conservancy district would be purchasing the sewer, water and stormwater infrastructure from the developer. On December 17, 2003 the Board of Directors of the conservancy district at a public meeting approved the district plan which provided for purchase of the infrastructure. The district plan which provided for



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purchase of the infrastructure was approved by IDNR on April 24, 2004 and subsequently approved by the Porter Circuit Court. There was also a meeting of homeowners on September 22, 2004 where the purchase was thoroughly discussed. Disclosures were also made to individuals purchasing lots in the subdivision that the conservancy district would be issuing indebtedness to purchase the infrastructure from the developer. On January 6, 2005 the Indiana Department of Local Government Finance approved issuance of the bond issue based upon the presumption that the infrastructure would be purchased from the developer. On August 22, 2005 the purchase was approved by the Board of Directors and the developer again publicly revealed and discussed his ownership of the infrastructure and specifically raised the issue of a conflict.

All of this information is provided so as to affirm that the transaction of acquiring the infrastructure from the developer was revealed, discussed and approved of a period of more than four years. The transaction was approved by the Porter Circuit Court, Indiana Department of Natural Resources, Natural Resources Commission and the Indiana Department of Local Government Finance. Furthermore, the developer was given a legal opinion that the definition of "pecuniary interest" required the developer to experience an ascertainable increase of income or net worth due to the transaction. Conveying the infrastructure at a loss negated the applicability of the statute.

All of this having been said, the developer will file the Uniform Conflict of Interest Disclosure Statement so as to avoid even the appearance of a conflict.

The Falling Waters Conservancy District is steadfast in its commitment to maintaining books and records consistent with your agencies requirements. Any and all necessary remedial action will be taken to accomplish that end. Your agencies willingness to assist the conservancy district through the audit process is greatly appreciated.

Sincerely,

BLACHLY TABOR BOZIK & HARTMAN

By: 
David L. Hollenbeck

DLH/clv