

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

EXAMINATION REPORT
OF
INDEPENDENCE HILL CONSERVANCY DISTRICT
LAKE COUNTY, INDIANA
January 1, 2007 to December 31, 2010



FILED
03/15/2011

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OFFICIALS

Office

Official

Term

Financial Clerk

Lynn E. Sattler

01-01-07 to 12-31-11

President of the Board

Margaret Uzelac
James W. Beshears

01-01-07 to 12-31-07
01-01-08 to 12-31-11



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE INDEPENDENCE HILL
CONSERVANCY DISTRICT, LAKE COUNTY, INDIANA

We have examined the financial information presented herein of the Independence Hill Conservancy District (District), for the period of January 1, 2007 to December 31, 2010. 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, 2007, 2008, 2009 and 2010, 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

January 31, 2011

INDEPENDENCE HILL CONSERVANCY DISTRICT
SCHEDULES OF RECEIPTS, DISBURSEMENTS, AND CASH AND INVESTMENT BALANCES
ALL GOVERNMENTAL FUND TYPES
As Of And For The Years Ended December 31, 2007, 2008, 2009 And 2010

	Cash and Investments 01-01-07	Receipts	Disbursements	Cash and Investments 12-31-07
Governmental Funds:				
General	\$ 2,055,067	\$ 8,903,345	\$ 9,660,649	\$ 1,297,763
Cumulative Improvement	1,682,941	7,583,838	7,292,126	1,974,653
2005 Bond Fund	<u>3,568,447</u>	<u>171,519</u>	<u>-</u>	<u>3,739,966</u>
Totals	<u>\$ 7,306,455</u>	<u>\$ 16,658,702</u>	<u>\$ 16,952,775</u>	<u>\$ 7,012,382</u>

	Cash and Investments 01-01-08	Receipts	Disbursements	Cash and Investments 12-31-08
Governmental Funds:				
General	\$ 1,297,763	\$ 12,229,038	\$ 11,610,531	\$ 1,916,270
Cumulative Improvement	1,974,653	10,833,780	10,839,132	1,969,301
2005 Bond Fund	<u>3,739,966</u>	<u>3,453,228</u>	<u>7,193,194</u>	<u>-</u>
Totals	<u>\$ 7,012,382</u>	<u>\$ 26,516,046</u>	<u>\$ 29,642,857</u>	<u>\$ 3,885,571</u>

	Cash and Investments 01-01-09	Receipts	Disbursements	Cash and Investments 12-31-09
Governmental Funds:				
General	\$ 1,916,270	\$ 11,367,497	\$ 11,827,192	\$ 1,456,575
Cumulative Improvement	<u>1,969,301</u>	<u>12,081,671</u>	<u>12,568,055</u>	<u>1,482,917</u>
Totals	<u>\$ 3,885,571</u>	<u>\$ 23,449,168</u>	<u>\$ 24,395,247</u>	<u>\$ 2,939,492</u>

	Cash and Investments 01-01-10	Receipts	Disbursements	Cash and Investments 12-31-10
Governmental Funds:				
General	\$ 1,456,575	\$ 9,195,398	\$ 9,373,038	\$ 1,278,935
Cumulative Improvement	<u>1,482,917</u>	<u>7,107,940</u>	<u>6,776,076</u>	<u>1,814,781</u>
Totals	<u>\$ 2,939,492</u>	<u>\$ 16,303,338</u>	<u>\$ 16,149,114</u>	<u>\$ 3,093,716</u>

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

INDEPENDENCE HILL CONSERVANCY DISTRICT
NOTES TO FINANCIAL INFORMATION

Note 1. Introduction

The District was established under the laws of the State of Indiana. The District provides for the collection, treatment and disposal of sanitary sewage.

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. Property Taxes

Property taxes levied are collected by the County Treasurer and are distributed to the District in June and December. State statute (IC 6-1.1-17-16) requires the Indiana Department of Local Government Finance to establish property tax rates and levies by February 15. These rates were based upon the preceding year's March 1 (lien date) assessed valuations adjusted for various tax credits. Taxable property is assessed at 100% of the true tax value (determined in accordance with rules and regulations adopted by the Indiana Department of Local Government Finance). Taxes may be paid in two equal installments which become delinquent if not paid by May 10 and November 10, respectively.

Note 5. 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.

INDEPENDENCE HILL CONSERVANCY DISTRICT
 SUPPLEMENTARY INFORMATION
 SCHEDULE OF CAPITAL ASSETS
 For The Years Ended December 31, 2010

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.

<u>Primary Government</u>	<u>Ending Balance</u>
Governmental activities:	
Capital assets, not being depreciated:	
Buildings	\$ 57,306
Infrastructure	1,555,945
Machinery and equipment	<u>262,522</u>
 Total governmental activities, capital assets not being depreciated	 <u>\$ 1,875,773</u>

INDEPENDENCE HILL CONSERVANCY DISTRICT
 SUPPLEMENTARY INFORMATION
 SCHEDULE OF LONG-TERM DEBT
 December 31, 2010

The District has entered into the following debt:

Description of Debt	Ending Principal Balance	Principal and Interest Due Within One Year
Governmental activities:		
Bonds payable:		
General obligation bonds:		
Taxable Conservancy District Bonds of 2005	<u>\$ 3,583,000</u>	<u>\$ 394,290</u>

INDEPENDENCE HILL CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS

PRIVATE PROPERTY

The Independence Hill Conservancy District made payments to the lessor of their office space for modifications to the building prior to their occupancy. The District paid \$5,970 for modifications to two adjoining suites to make the space more conducive to District business; however, they do not own the property.

Generally, public funds may not be used to make improvements to property not owned by the governmental unit, unless permitted by statute, federal requirements, state requirements, or safety concerns. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 14)

ERRORS ON CLAIMS

Some disbursements made to the District's engineering firm were made without a properly itemized claim. The contract for engineering services guarantees the firm a \$6,250 per month retainer for up to 50 hours of work. For each hour beyond 50 hours, the District is charged an hourly rate plus costs. The claims for the monthly retainer do not include detailed itemization of the services provided or the hours worked on District business. The claims submitted for hours in excess of 50 do include details of services provided and hours worked beyond the original 50; there is no itemization of the first 50 hours worked per month.

IC 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 there is a fully itemized invoice or bill for the claim. . . "

INDEPENDENCE HILL CONSERVANCY DISTRICT
EXIT CONFERENCE

The contents of this report were discussed on January 31, 2011, with Lynn E. Sattler, Financial Clerk, and James W. Beshears, President of the Board. The official response has been made a part of this report and may be found on pages 10 through 15.

INDEPENDENCE HILL CONSERVANCY DISTRICT

7507 Taft Street, Suites 2 & 3
Merrillville, Indiana 46410

Telephone: (219) 769-3996
Fax: (219) 769-6237

February 4, 2011

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

RE: IHCD Examination Results and Comments

Dear Mr. Hartman:

The following is the response to Comment #1 received at the exit conference.

Response to Comment #1, that improvements to non-owned property violate the private property provision ("PPP") in Chapter 14 of the Accounting and Uniform Compliance Guidelines Manual for Special Districts ("Manual"):

1. The improvements were tenant improvements to lease office space and were reasonable and necessary to make the space suitable for IHCD's use.

From 1993 through 2007, IHCD leased office space at 2305 W. 82nd Place. On August 31, 2007, the lessor gave notice that it would not extend the lease term past its then current expiration date, December 31, 2007. Following a search for another location, the IHCD board of directors ("Board") on November 27, 2007, entered into a written agreement to lease as office space suites 2 & 3, 7507 Taft Street, commencing January 1, 2008, for an initial term of four years plus an unlimited number of successive year-to-year renewals, after the fourth year, at the option of the Board.

Before signing, the Board determined that certain alterations to the leased space were necessary to make the space suitable for IHCD's use, including addition of an entry vestibule, interior passage door, file storage room, computer shelf, telephone outlets, electrical outlets, and computer data ports. The entry vestibule was needed to allow customers and others a place to enter, make payments, and do other business without entering a secure and private interior work area. The interior passage door was required to allow access to both leased suites without having to exit the building. The file storage room, computer shelf, telephone outlets, electrical outlets, and computer data ports were required to meet IHCD's specific needs, as determined by the Board.

Alterations such as these to leased premises to meet the specific needs of an individual lessee are commonly referred to as "tenant improvements" or "leasehold improvements" or "build-out."

At that time, the building was in process of original construction by the lessor or an affiliated entity. After negotiation, the lessor and Board agreed, and it was written into the terms of the lease agreement, that the lessor would make the proposed tenant improvements, at a cost to IHCD of \$5970, before IHCD took occupancy of the premises. The lessor proceeded to make the tenant improvements to the Board's satisfaction, and IHCD paid as agreed and took occupancy of the leased premises.

2. The improvements were not remuneration of an officer or employee.

The PPP is set forth in Chapter 14 of the Manual, entitled "compensation and benefits," which is a collection of rules relating to remuneration of officers and employees. It (or a comparable provision) is not set forth in Chapter 18 of the Manual, which is a collection of rules relating to leasing property.

It may therefore be worthy of note that IHCD's lessor is not and never was an officer, employee, or independent contractor of IHCD and is not and never was controlled directly or indirectly by any current or former officer, employee, or independent contractor of IHCD.

3. Tenant improvements by conservancy districts are not prohibited by the PPP because permitted by statute.

By its express terms, the PPP does not prohibit improvements to non-owned property if permitted by a statute. The authority granted by statute includes not only the authority granted by the express words of the statute but also that authority that is necessarily or fairly implied by or incidental to the authority expressly granted. *E.g., Osborne v. State*, 439 N.E.2d 677, 683 (Ind. App. 1982).

IC 14-33-6-13(b) authorizes the board of directors of a conservancy district to "purchase or rent property" and "incur other debts and liabilities," if necessary to construct or maintain the district's public works. IC 14-33-5-22(b) authorizes the board of directors of a conservancy district to "enter into an agreement with a person . . . for any purpose compatible with the purposes for which the district exists." IC 14-33-23(b) states that "this article [IC 14-33] shall be liberally construed to accomplish the purpose of creating districts by which local water management problems can best be solved."

IHCD believes that authority to make (and pay for) tenant improvements is necessarily and fairly implied by or incidental to the express statutory authority to rent property and, therefore, the PPP by its express terms does not prohibit tenant improvements by a conservancy district.

4. Tenant improvements are not prohibited by the PPP because not "improvements."

By its express terms, the PPP only prohibits "improvements" to non-owned property. However, the term "improvements" is not defined and is ambiguous. IHCD believes that it means and is limited to alterations that add to the fair market value of the property as a whole.

IHCD believes that its tenant improvements did not add to the fair market value of the property as a whole. Because the tenant improvements are designed to meet IHCD's specific needs, it is likely that any new lessee succeeding to IHCD would need to remove or substantially alter IHCD's tenant improvements as a part of the new lessee's own tenant improvements.

5. Tenant improvements are not prohibited by the PPP because not made to non-owned property.

By its express terms, the PPP only prohibits improvements to property not owned (unless permitted by a statute). However, the term "not owned" is not defined and is ambiguous. IHCD believes that it means and is limited to property in which the political subdivision has no beneficial interest.

A tenant's leasehold interest is a beneficial interest in property that the tenant owns. Since tenant improvements are made to property in which the lessee owns a leasehold beneficial interest, the PPP by its express terms is not applicable to tenant improvements.

6. Application of the PPP to tenant improvements would conflict with the IC 36-1-10 general statutory scheme for leasing property.

By its express terms, the PPP does not prohibit improvements to non-owned property if permitted by a statute. IC 36-1-10 sets out a comprehensive scheme of rules and procedures applicable to political subdivisions generally that wish to lease or lease-purchase buildings and certain other kinds of property. Application of the PPP to tenant improvements would conflict with that statutory scheme because that scheme permits leases and lease terms that are not "unnecessary or unwise," and makes the Department of Local Government Finance ("DLGF"), not the State Board of Accounts, the final authority as to whether a political subdivision's proposed lease should be approved.

In connection with adoption of the lease in question, IHCD followed the IC 36-1-10 statutory scheme. Before signing the lease, the Board published notice of a public hearing at which interested persons could present objections. The published notice of hearing included, among other things, a description of the proposed tenant improvements and what they would cost. The Board held the public hearing, confirmed the lease, signed it, and published notice of its execution. Pursuant to IC 36-1-10-14, ten or more IHCD taxpayers could have filed a petition with the county auditor objecting to the lease; and then DLGF would have been required to hold a hearing and determine whether the lease or lease terms were "unnecessary or unwise" and should not be approved. However, no one filed any objections to the IHCD lease.

If the Legislature had intended to ban tenant improvements outright, it would have been expected to have included the ban in such a comprehensive and general leasing scheme as IC 36-1-10. Therefore, application of the PPP to IHCD's tenant improvements would be contrary to this law.

Sincerely,



James W. Beshears
IHCD Chairman

North-West Engineering Co., Inc.
- Consulting Engineering -

100 West 4th Avenue, 2nd Floor • Gary, Indiana 46402
Phone: (219) 882-6856 • Fax: (219) 882-6867

January 31, 2011

Independence Hill Conservancy District
7507 Taft Street, Suite 2 & 3
Merrillville, IN 46410

Attention: Ms. Lynn Sattler

RE: State Board of Accounts Audit
Errors on Claims regarding Engineering Firm

Dear Ms. Sattler,

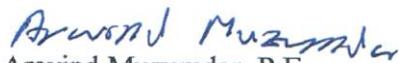
The Board of Accounts Audit stated that "Some disbursements made to the District's engineering firm were made without a properly itemized claim." Per the 2007 Engineering Proposal to IHCD Page 7 of 13 states that:

"The PRINCIPAL shall be compensated monthly services described in Section 1. A. The PRINCIPAL shall be guaranteed a retainer of \$6,250.00 per month, and at such as the hours of work for the ONWER reaches 50 hours for the month, each additional hour shall be charged at the rate of \$125.00 per hour plus cost of expenses and equipment as outline in Section V, sub-section C and D. All other ENGINEER's staff shall be compensated separately at the rates shown in Appendix A."

This proposal states that each month we are to invoice \$6,250 for the Principal for work up to 50 hours and every other staff member is to be paid separately from that \$6,250 as the rates show in Appendix A. The hours charged are for those employees who are directly working on engineering projects directly for IHCD for services such as design drafting, surveying, etc. Any of the invoices billed to IHCD did not include any hours for the Principal except for the retainage. There has not been a time where IHCD was charged more than the minimum guaranteed for the Principal.

Therefore, please forward our response to the Board of Accounts. You can also verify that none of the invoices include hourly charges for Principal except for the retainage. Enclosed is a copy of Page 7 of 13 and Appendix A of the 2007 Engineering Proposal.

Very truly yours,


Aravind Muzumdar, P.E.
President

Encl.

10. OWNER, from time to time, shall provide to the ENGINEER inspectors and maintenance employees required by the ENGINEER in the performance of engineering duties, ENGINEER agrees to direct employees of the owner, as to all matters required in the performance of engineering duties.

SECTION IV – PERIOD OF SERVICES

A. STANDARD PROFESSIONAL SERVICES

The services called for this agreement shall continue until terminated.

B. IMPROVEMENT PROJECTS

After the OWNER'S acceptance of the preliminary report and upon written authorization from the OWNER and agreement as to the final scope of the Project, the ENGINEER shall proceed with the performance of the services called for in Section II. B., Improvement Projects, of this Agreement. The ENGINEER shall deliver the completed construction drawings, specifications and cost estimates for all authorized work on the project in accordance with the Supplemental Letter Agreement submitted by the ENGINEER for each individual project.

SECTION –V - PAYMENTS TO THE ENGINEER

A. DAY TO DAY PROFESSIONAL SERVICES AND MEETING ATTENDANCE UNDER SECTION I:

1. Compensation

The PRINCIPAL shall be compensated monthly for services described in Section I. A. The PRINCIPAL shall be guaranteed a retainer of \$6,250.00 per month, and at such time as the hours of work for the OWNER reaches 50 hours for the month, each additional hour shall be charged at the rate of \$125.00 per hour plus cost of expenses and equipment as outlined in Section V, sub-section C and D. All other ENGINEER'S staff shall be compensated separately at the rates shown in Appendix A.

2. The ENGINEER shall bill the OWNER monthly for services preformed as described in Section I. Sub-sections A and B.

APPENDIX A

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

THE INDEPENDENCE CONSERVANCY DISTRICT
MERRILLVILLE, INDIANA

AND

NORTH-WEST ENGINEERING CO., INC.
2007

<u>CONSULTING</u>	<u>RATE / Hr.</u>
Consulting Engineer for services beyond 50/hr. month	\$125.00

<u>SPECIAL PROJECTS – DESIGN</u>	<u>RATE / Hr.</u>
Design Engineering	
Principal	\$125.00
Project Manager	\$100.00
Engineer	\$ 80.00
Technician	\$ 60.00

Outside Engineering (Billed @ Consultants rate x 1.15%)

TECHNICAL ASSISTANCE FOR MCD/IHCD AGREEMENT

	<u>RATE / Hr.</u>
Principal	\$125.00
Project Manager	\$100.00