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

AUDIT REPORT
OF

REDEVELOPMENT COMMISSION
CITY OF SOUTH BEND

ST. JOSEPH COUNTY, INDIANA

January 1, 2011 to December 31, 2011



FILED
07/18/2012

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
City Officials	2
Transmittal Letter	3
Audit Results and Comments:	
Deposits	4
Tax Incremental Financing (TIF) Expenditures	4-6
Exit Conference.....	7
Official Response	8-11

CITY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Director of Division of Economic Development	Donald E. Inks	01-01-11 to 12-31-12
President of the Redevelopment Commission	Marcia I. Jones	01-01-11 to 12-31-12
Mayor	Stephen J. Luecke Pete M. Buttigieg	01-01-08 to 12-31-11 01-01-12 to 12-31-15
President of the Common Council	Derek D. Dieter	01-01-11 to 12-31-12



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STATE BOARD OF ACCOUNTS
302 WEST WASHINGTON STREET
ROOM E418
INDIANAPOLIS, INDIANA 46204-2769

Telephone: (317) 232-2513
Fax: (317) 232-4711
Web Site: www.in.gov/sboa

TO: THE OFFICIALS OF THE CITY OF SOUTH BEND

We have audited the records of the Redevelopment Commission for the period from January 1, 2011 to December 31, 2011, 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 the City of South Bend for the year 2011.

STATE BOARD OF ACCOUNTS

May 31, 2012

REDEVELOPMENT COMMISSION
CITY OF SOUTH BEND
AUDIT RESULTS AND COMMENTS

DEPOSITS

In numerous instances, Blackthorn Golfcourse receipts were deposited later than the next business day. For example, in July and August 2011, bank statements show that deposits were made on four separate days only for July and in August, there were six deposits.

Indiana Code 5-13-6-1(d) states:

"A city (other than a consolidated city) or a town shall deposit funds not later than the next business day following the receipt of the funds in depositories (1) selected by the city or town as provided in an ordinance adopted by the city or the town; and (2) approved as depositories of state funds."

In addition to the Indiana Code requirements listed above, Section 7.2.a of the Blackthorn Golf Course Operations Management Agreement between the Owner and the Manager requires the Manager to "Collect and within one business day, unless prevented from doing so by circumstances beyond the reasonable control of the Manger, deposit into the Operating Accounts all revenues from the golf course operations."

TAX INCREMENTAL FINANCING (TIF) EXPENDITURES

During 2011, the City used TIF funds to pay for a downtown beautification program, lawn mowing, hotel management fee, general maintenance, pest control, snow removal, and office rental.

Pursuant to IC 36-7-14-39 (2):

"Except as otherwise provided in this section, property tax proceeds in excess of those described in subdivision (1) shall be allocated to the redevelopment district and, when collected, paid into an allocation fund for that allocation area that may be used by the redevelopment district only to do one (1) or more of the following:

- (A) Pay the principal of and interest on any obligations payable solely from allocated tax proceeds which are incurred by the redevelopment district for the purpose of financing or refinancing the redevelopment of that allocation area.
- (B) Establish, augment, or restore the debt service reserve for bonds payable solely or in part from allocated tax proceeds in that allocation area.
- (C) Pay the principal of and interest on bonds payable from allocated tax proceeds in that allocation area and from the special tax levied under section 27 of this chapter.
- (D) Pay the principal of and interest on bonds issued by the unit to pay for local public improvements that are physically located in or physically connected to that allocation area.
- (E) Pay premiums on the redemption before maturity of bonds payable solely or in part from allocated tax proceeds in that allocation area.
- (F) Make payments on leases payable from allocated tax proceeds in that allocation area under section 25.2 of this chapter.

REDEVELOPMENT COMMISSION
CITY OF SOUTH BEND
AUDIT RESULTS AND COMMENTS
(Continued)

(G) Reimburse the unit for expenditures made by it for local public improvements (which include buildings, parking facilities, and other items described in section 25.1(a) of this chapter) that are physically located in or physically connected to that allocation area.

(H) Reimburse the unit for rentals paid by it for a building or parking facility that is physically located in or physically connected to that allocation area under any lease entered into under IC 36-1-10.

(I) For property taxes first due and payable before January 1, 2009, pay all or a part of a property tax replacement credit to taxpayers in an allocation area as determined by the redevelopment commission. This credit equals the amount determined under the following STEPS for each taxpayer in a taxing district (as defined in IC 6-1.1-1-20) that contains all or part of the allocation area:

STEP ONE: Determine that part of the sum of the amounts under IC 6-1.1-21-2(g)(1)(A), IC 6-1.1-21-2(g)(2), IC 6-1.1-21-2(g)(3), IC 6-1.1-21-2(g)(4), and IC 6-1.1-21-2(g)(5) that is attributable to the taxing district.

STEP TWO: Divide:

- (i) that part of each county's eligible property tax replacement amount (as defined in IC 6-1.1-21-2) for that year as determined under IC 6-1.1-21-4 that is attributable to the taxing district; by
- (ii) the STEP ONE sum.

STEP THREE: Multiply:

- (i) the STEP TWO quotient; times
- (ii) the total amount of the taxpayer's taxes (as defined in IC 6-1.1-21-2) levied in the taxing district that have been allocated during that year to an allocation fund under this section.

If not all the taxpayers in an allocation area receive the credit in full, each taxpayer in the allocation area is entitled to receive the same proportion of the credit. A taxpayer may not receive a credit under this section and a credit under section 39.5 of this chapter (before its repeal) in the same year.

(J) Pay expenses incurred by the redevelopment commission for local public improvements that are in the allocation area or serving the allocation area. Public improvements include buildings, parking facilities, and other items described in section 25.1(a) of this chapter.

(K) Reimburse public and private entities for expenses incurred in training employees of industrial facilities that are located:

- (i) in the allocation area; and

REDEVELOPMENT COMMISSION
CITY OF SOUTH BEND
AUDIT RESULTS AND COMMENTS
(Continued)

- (ii) on a parcel of real property that has been classified as industrial property under the rules of the department of local government finance. However, the total amount of money spent for this purpose in any year may not exceed the total amount of money in the allocation fund that is attributable to property taxes paid by the industrial facilities described in this clause. The reimbursements under this clause must be made within three (3) years after the date on which the investments that are the basis for the increment financing are made.
- (L) Pay the costs of carrying out an eligible efficiency project (as defined in IC 36-9-41-1.5) within the unit that established the redevelopment commission. However, property tax proceeds may be used under this clause to pay the costs of carrying out an eligible efficiency project only if those property tax proceeds exceed the amount necessary to do the following:
- (i) Make, when due, any payments required under clauses (A) through (K), including any payments of principal and interest on bonds and other obligations payable under this subdivision, any payments of premiums under this subdivision on the redemption before maturity of bonds, and any payments on leases payable under this subdivision.
 - (ii) Make any reimbursements required under this subdivision.
 - (iii) Pay any expenses required under this subdivision.
 - (iv) Establish, augment, or restore any debt service reserve under this subdivision.

The allocation fund may not be used for operating expenses of the commission."

REDEVELOPMENT COMMISSION
CITY OF SOUTH BEND
EXIT CONFERENCE

The contents of this report were discussed on May 30, 2012, with Pete M. Buttigieg, Mayor; Mark Neal, City Controller' and with Oliver Davis, Vice President of the Common Council.

The contents of this report were also discussed on May 31, 2012, with Donald E. Inks, Director, Economic Development; and with Marcia I. Jones, Redevelopment Commission Director. The Official Response has been made a part of this report and may be found on pages 8 through 11.

Faegre Baker Daniels LLP
202 South Michigan Street ▾ Suite 1400
South Bend ▾ Indiana 46601-2020
Phone +1 574 234 4149
Fax +1 574 239 1900

M E M O R A N D U M

TO: Donald E. Inks
Lawrence J. Meteiver, Esq.

FROM: FAEGRE BAKER DANIELS LLP
-- Richard L. Hill, Esq.
-- Randolph R. Rompola, Esq.

DATE: June 1, 2012

RE: Questions Regarding Use of TIF Funds

via Electronic Mail

We understand that the State Board of Accounts have questioned certain uses of tax increment finance ("TIF") funds by the South Bend Redevelopment Commission (the "Commission"). Below we provide our analysis generally with respect to the use of TIF as set out in Indiana Code 36-7-14 (the "Act") and relevant case law. Following that, we analyzed the specific uses of TIF which have been questioned by the State Board of Accounts.

A. The Use of TIF in a Redevelopment or Economic Development Area Generally.

Section 39 of the Act sets forth the mechanism by which TIF is created and also its permitted uses for redevelopment and economic development. In upholding the constitutionality of the TIF provision in Section 39 of the Act, the Indiana Supreme Court in South Bend Public Transportation Corporation v. City of South Bend, 428 N.E.2d 217 (Ind. 1981) (the "Transpo Case") stated that the TIF provision in Section 39 "requires the sharing of those costs by all public bodies benefitting from the redevelopment by requiring all post-development tax revenues attributable to increase of assessed values to be paid to the Department until all costs of public improvements associated with the redevelopment have been paid." As set forth in Section 39 of the Act, TIF may be used by the Redevelopment Commission for a variety of purposes including reimbursing the City "for expenditures made by it for local public improvements (which include buildings, parking facilities and other items described in Section 25.1(a) of this chapter) that are physically located and are physically connected to that allocation

area" and also to pay expenses that the Commission has incurred "for local public improvements that are in the allocation area or serving the allocation area which public improvements include buildings, parking facilities and other items described in Section 25.1(a) of this chapter." Section 25.1(a) of the Act relates to the issuance of bonds by a redevelopment commission and sets forth the permitted uses of the proceeds of the bonds. Such permitted uses include:

- (1) The total costs of all land, rights of way, and other property to be acquired and redeveloped;
- (2) All reasonable and necessary architectural, engineering, legal, financing, accounting, advertising, bond discount, and supervisory expenses related to the acquisition and redevelopment of the property or the issuance of bonds;
- (3) Capitalized interest permitted by this chapter in a debt service reserve for the bonds to the extent the redevelopment commission determines that a reserve is reasonably required; and
- (4) Expenses that the redevelopment commission is required or permitted to pay under I.C. 8-23-17.

As used in Section 25.1, "redevelopment" has a particular meaning which is set forth in Indiana Code 36-7-1-18. Among the various activities which are defined as "redevelopment," Section 18 states that "[r]epairing and maintaining buildings acquired, if demolition of those buildings is not considered necessary to carry out the redevelopment plan" is considered a redevelopment activity.

Given the statutory language and the Indiana Supreme Court analysis in the case which originally found the TIF provisions in Section 39 to be constitutional, we believe that the Act and its language regarding the use of TIF for the purposes specified in Section 39 should be read in a manner that furthers the redevelopment and economic development activities of a county, city or town. Consequently, we believe that each of the uses of TIF described below are consistent with the requirements of the Act and related statutory provisions and also consistent with the analysis offered by the Indiana Supreme Court in the Transpo case.

B. Analysis of Specific TIF Uses.

1. Downtown Beautification Program.

We understand from the Commission's staff that the Commission expended TIF Funds for the purpose of improving the look of the core downtown business district with plantings throughout the summer months. We believe these improvements in the downtown area do constitute a local public improvement under the Act. The purpose of this expenditure is to promote the downtown business area to developers and entrepreneurs that may wish to locate businesses in the retail store fronts that are available and also in the office spaces in the downtown area that are available. We understand that one might argue these constitute "operating expenses" of the Commission. However, we do not believe that they are properly categorized as operating expenses of the Commission. The Commission has no other purpose

for undertaking this work other than to provide a means to promote and provide for the beautification of the downtown business area. One of the primary purposes of the Act is to provide for the redevelopment/economic development of areas in a community in need of such effort. The Commission, with its prior findings designating the downtown area as a redevelopment area, has determined that the area is in need of the special powers available to the Commission and also the funding that the Commission has available to it with the use of TIF Funds. The Commission has undertaken all means available to it to promote development in the downtown area and other areas of the City. We do believe that such expenditures, when the purpose for which can be shown to clearly have an economic development or redevelopment purpose, qualify as a local public improvement under the Act.

2. Lawn Mowing, Hotel Management Fee and General Maintenance and Pest Control and Snow Removal.

By virtue of its economic development efforts, the Commission has acquired land throughout the City in several of its economic development or redevelopment areas. In some cases, the Commission is acquiring land for the purpose of accumulating a larger parcel that would be more amenable to development. In other circumstances, the Commission acquiring one parcel of land (such as the LaSalle Hotel property) with the understanding that it would offer that property for development to an interested developer. In either case, however, the Commission must provide certain basic maintenance and upkeep in order to maintain the property at a level which would allow for its future development. While we understand that it would be easy to characterize these expenditures as ongoing operating expenses related to management of parcels of property currently owned by the Commission, we believe that the expenditure of TIF Funds for the expenses are specifically authorized by the Act and the definition of "redevelopment" as set forth in I.C. 36-7-1-18 as outlined above. The Act presumes that the Commission may act to "land-bank" parcels of property as it attempts to assemble smaller parcels into one larger parcel which is more likely to be more developable. It is rational to presume that there would need to be maintenance to be completed with respect to these individual parcels as they are acquired. The definition of redevelopment specifically anticipates this by permitting the "repairing and maintenance" of buildings. Not being able to use TIF Funds for such ongoing maintenance would frustrate the intent of the Act.

3. Monthly Office Rental.

The Commission entered into a contract with a consultant to provide services with respect to the Commission's economic development project known as Ignition Park. Ignition Park is an area of the old Studebaker complex which the City is marketing to high tech businesses. The role of the consultant hired by the Commission was to determine the best course of action to have such businesses locate to Ignition Park and to identify businesses growing in the Notre Dame-sponsored facility known as Innovation Park. As part of the compensation for this individual, the Commission agreed to pay for the rental of office space at the Innovation Park facility. In order for the consultant to perform her duties to the Commission, the consultant had to be located both at Ignition Park and also Innovation Park. While the method of compensation was somewhat unique, the hiring of this consultant as an expert in dealing with high tech businesses and what would motivate them to locate at Ignition Park is not an unusual expenditure for TIF Funds. It is also noteworthy that Ignition Park and Innovation Park both

comprise one (1) certified Technology Park under Indiana Code 36-7-32. The intent of having both treated as one Tech Park was to contemplate the transition of high-tech enterprises growing out of the University of Notre Dame to larger, permanent facilities at Ignition Park. The consultant was hired to facilitate that effort. We do not believe the method of compensation should frustrate the intent of the consultant's work.

Should you have any questions, please do not hesitate to call.

RRR/ays