

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, 2012 to December 31, 2012



FILED
09/30/2013

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CITY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Director of Administration and Finance for the Department of Community Investments	Elizabeth Leonard-Inks	01-01-12 to 12-31-13
President of the Redevelopment Commission	Marcia I. Jones	01-01-12 to 12-31-13
Mayor	Pete M. Buttigieg	01-01-12 to 12-31-15
President of the Common Council	Derek D. Dieter	01-01-12 to 12-31-13



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TO: THE OFFICIALS OF THE CITY OF SOUTH BEND

We have audited the records of the Redevelopment Commission for the period from January 1, 2012 to December 31, 2012, 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 Comprehensive Annual Financial Report of the City of South Bend for the year 2012.

STATE BOARD OF ACCOUNTS

June 10, 2013

REDEVELOPMENT COMMISSION
CITY OF SOUTH BEND
AUDIT RESULTS AND COMMENTS

TAX INCREMENTAL FINANCING (TIF) EXPENDITURES

The prior report, Report No. B40583, included an exception noting that the City used Tax Increment Financing (TIF) funds to pay for a downtown beautification program, lawn mowing, hotel management fee, general maintenance, pest control, snow removal, and office rental. For 2012, the City continued to pay for these types of expenditures from TIF funds. In addition, TIF funds were used for the following: \$718,936 for a diesel engine generator; \$161,208 for a voltage transfer switchgear; approximately \$138,000 for scientific equipment, all of which was part of an economic incentives to businesses program. Also, officials agreed to pay approximately \$170,000 in TIF Funds to an organization for creating technological solutions to civic issues.

Pursuant to Indiana Code 36-7-14-39(b)(3):

"Except as otherwise provided in this section, property tax proceeds in excess of those described in subdivisions (1) and (2) 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.
- (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:

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

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) (before their repeal) 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 (before its repeal)) for that year as determined under IC 6-1.1-21-4 (before its repeal) 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 (before its repeal)) 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
- (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:

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

- (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."

Sources and uses of funds should be limited to those authorized by the enabling statute, ordinance, resolution, or grant agreement. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

DEPOSITS

As stated in the prior Report No. B40583, in numerous instances, receipts were deposited later than the next business day. For example, the deposits made per week varied from one deposit per week to three deposits per week, depending on the amount collected by the golf course. During the months of July, August, September, October, November, and December, the total deposits per month were 11, 11, 9, 8, 4, and 6, respectively.

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 Manager, deposit into the Operating Accounts all revenues from the golf course operations."

REDEVELOPMENT COMMISSION
CITY OF SOUTH BEND
EXIT CONFERENCE

The contents of this report were discussed on June 4, 2013, with Marcia I. Jones, President of the Redevelopment Commission, and with Elizabeth Leonard-Inks, Director of Administration and Finance for the Department of Community Investment; on June 5, 2013, with Pete M. Buttigieg, Mayor; Mark Neal, City Controller; and on June 10, 2013, with Derek D. Dieter, President of the Common Council. The Official Response has been made a part of this report and may be found on pages 8 through 12.

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CITY OF SOUTH BEND PETE BUTTIGIEG, MAYOR
REDEVELOPMENT COMMISSION

June 13, 2013

State Board of Accounts
Eighth Floor
County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601

Re: Redevelopment Funds – 2012 Audit Exceptions

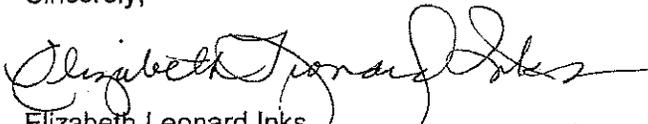
Dear Board Staff:

We have met with your South Bend staff regarding the exception in our audit. In relationship to TIF Expenditures, we offer the attached legal opinion on compliance with State law for all questioned items. We are diligent in our efforts to determine legal guidance prior to committing TIF funds and are confident we are in compliance.

Regarding exception on the daily deposits at Blackthorn Golf Club, we have discussed the matter with the manager at Blackthorn and have strongly reiterated that deposits must be made within one day of receipt. In order to monitor the actions of the manager, we will be reviewing the bank statements each month to check on deposit dates to ensure compliance. Management at Blackthorn, as well as the staff in our office, regrets this error and we are committed to correcting the situation.

We thank you and your staff for the professionalism of the audit and appreciate the opportunity to comment.

Sincerely,


Elizabeth Leonard Inks
Director, Administration & Finance

MARCIA JONES
PRESIDENT

DAVID VARNER
VICE PRESIDENT

NANCY KING
SECRETARY

GREG DOWNES
MEMBER

DONALD ALFORD
MEMBER

STEPHANIE SPIVEY
MEMBER

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MEMORANDUM

TO: Scott Ford
Beth Leonard
Mark Neal

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

DATE: June 12, 2013

RE: Response to Questions Raised by the State Board of Accounts ("SBOA")
Regarding Certain TIF Expenditures

via Electronic Mail

We understand that once again the SBOA has questioned how the Redevelopment Commission has utilized tax increment finance ("TIF") revenues. Below is the analysis we provided in 2012 along with some additional analysis regarding the use of TIF revenues for expenditures related to F Cubed and also Data Realty. Finally, we include our view of the use of TIF for the Code for America Project.

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. Additionally, Section 18 provides that the term "redevelopment" includes "disposing of property acquired on the terms and conditions set for the uses and purposes that serve the interest of the unit served by the redevelopment commission." The use of the term "property" without distinguishing between real and/or personal property is significant in that other subdivisions of Section 18 do make such distinctions, suggesting that a commission may dispose of real or personal property in its possession. Among the general powers of a redevelopment commission in Section 12.2 of the Act, a redevelopment commission may acquire any personal property.

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 (except as noted with respect to the Code for America program) 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 revenues 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, TIF may be used for local public improvements which include expenditures related to the acquisition and redevelopment of property and, as defined, redevelopment includes the repairing and maintaining of buildings acquired. 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.

4. F Cubed Project. In 2012, the Commission entered into an economic development agreement with F Cubed, a start up entity growing out of the Innovation Park facility adjacent to Notre Dame. As the company was looking to expand and relocate, the Commission desired to have the company relocate at Ignition Park which is located within an existing redevelopment area and adaptive reuse of the former Studebaker manufacturing corridor. As part of the economic development agreement, the Commission determined to acquire certain personal property and dispose of such personal property to F Cubed as an incentive for F Cubed to ultimately relocate to Ignition Park. As noted above, there exists within the Act, authority for the Commission to acquire items of personal property and dispose of such personal property as an economic development or redevelopment purpose.

5. Data Realty Project. Similar to F Cubed, the Commission agreed to provide certain economic incentives to Data Realty, a high tech company locating within Ignition Park referred to above. Among the incentives offered to Data Realty for locating within the Park and providing meaningful employment opportunities to area residents, the Commission agreed to acquire a generator and dispose of the personal property to Data Realty. As described above with respect to F Cubed, we believe there is sufficient authority within the Act to encourage the Commission to undertake such redevelopment and economic development activities within the boundaries of its redevelopment and economic development areas. In addition to the statutory authority cited above, we are also aware of other communities across the State that are engaging in such economic development efforts to promote their communities as they look to compete against other states and other countries for such high tech businesses.