

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

SUPPLEMENTAL COMPLIANCE REPORT

OF

CITY OF WESTFIELD

HAMILTON COUNTY, INDIANA

January 1, 2019 to December 31, 2019



**FILED**  
11/25/2020



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SCHEDULE OF OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Clerk-Treasurer	Cindy Gossard	01-01-19 to 12-31-20
Mayor	Andrew Cook	01-01-19 to 12-31-20
President of the Board of Public Works	Andrew Cook	01-01-19 to 12-31-20
President of the Common Council	Mark Keen Joe Edwards	01-01-19 to 12-31-19 01-01-20 to 12-31-20



**STATE OF INDIANA**  
AN EQUAL OPPORTUNITY EMPLOYER

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](http://www.in.gov/sboa)

TO: THE OFFICIALS OF THE CITY OF WESTFIELD, HAMILTON COUNTY, INDIANA

This report is supplemental to our audit report of the City of Westfield (City), for the period from January 1, 2019 to December 31, 2019. It has been provided as a separate report so that the reader may easily identify any Audit Results and Comments that pertain to the City. It should be read in conjunction with our Financial Statement Audit Report of the City, which provides our opinions on the City's financial statement. This report may be found at [www.in.gov/sboa/](http://www.in.gov/sboa/).

As authorized under Indiana Code 5-11-1, we performed procedures to determine compliance with applicable Indiana laws and uniform compliance guidelines established by the Indiana State Board of Accounts. The Audit Results and Comments contained herein describe the identified reportable instances of noncompliance found as a result of these procedures. Our tests were not designed to identify all instances of noncompliance; therefore, noncompliance may exist that is unidentified.

Any Official Response to the Audit Results and Comments, incorporated within this report, was not verified for accuracy.

*Paul D. Joyce*  
Paul D. Joyce, CPA  
State Examiner

October 26, 2020

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CLERK-TREASURER  
CITY OF WESTFIELD

CLERK-TREASURER  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS

**COMPENSATION SPLIT BY PERCENTAGE**

The same comment also appeared in prior Report B55979.

*Condition and Context*

The City has employees working in two different departments; however, time records were not maintained to support the number of hours worked and charged to each of the two departments and funds during the audit period.

*Criteria*

Indiana Code 5-11-9-4(b) states:

"The state board of accounts shall require that records be maintained showing which hours were worked each day by officers and employees:

- (1) covered by section 1 or 2 of this chapter; and employed by more than one
- (2) public agency or in more than one (1) position by the same public agency described in section 1 or 2 of this chapter."

All compensation and benefits paid to officials and employees must be included in the labor contract, salary ordinance, resolution, or salary schedule adopted by the governing body unless otherwise authorized by law. Compensation must be paid in a manner that will facilitate compliance with state and federal reporting requirements. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 1)

**MOTOR VEHICLE HIGHWAY RESTRICTED FUNDS**

*Condition and Context*

Motor Vehicle Highway (MVH) and MVH Restricted funds are maintained in the same fund on the City's ledger rather than being maintained in separate funds as directed by the State Examiner. The City did not establish the MVH Restricted sub-fund with the appropriate fund number. MVH and MVH Restricted were not shown separately on the Annual Financial Report.

Disbursements of MVH Restricted funds were noted for snow removal, planning/development, refunds, purchase of right-of-ways, and walking path paving totaling \$105,744. These disbursements were not for construction, reconstruction, and preservation of the City's roadways as required by statute.

CLERK-TREASURER  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS  
(Continued)

*Criteria*

On the chart of accounts, the MVH Fund and MVH Restricted sub-fund shall be shown as follows: . . . Cities and Towns Fund 201 MVH Fund 203 MVH Restricted. Together, MVH and MVH Restricted shall constitute the total MVH Fund. MVH and MVH Restricted will be shown separately on the Annual Financial Report . . . (State Examiner Directive 2018-2)

Indiana Code 8-14-1-5(c) states: "For funds distributed to a city or town from the motor vehicle highway account, the city or town shall use at least fifty percent (50%) of the money for the construction, reconstruction, and preservation of the city's or town's highways."

**SUPPORTING DOCUMENTATION**

The same comment also appeared in prior Report B55979. The nature of issues found were over a span of time as noted in the comments. The timing of the audits for fiscal years 2018 and 2019 were such that the contents of Report B55979 were communicated to the city officials on September 29, 2020, 27 days prior to when the contents of this report were communicated. Recognition of these issues and pledge to correct any deficiencies may be found in the official response contained within the prior report. Corrective action is expected subsequent to the current report.

*Condition and Context*

Payments totaling \$30,000 were made in 2019 to Downtown Westfield Association without a written agreement or contract.

*Criteria*

Supporting documentation such as receipts, canceled checks, tickets, invoices, bills, contracts, and other public records must be available for examination to provide supporting information for the validity and accountability of monies disbursed. Payments without supporting documentation may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 1)



**CLERK TREASURER'S OFFICE**  
**Cindy J. Gossard / Clerk Treasurer**

130 Penn Street / Westfield, Indiana 46074  
OFFICE 317.804.3020 / FAX 317.804-3024  
westfield.in.gov

October 26, 2020

Clerk-Treasurer  
City of Westfield  
2019 Audit Results and Comments

**OFFICIAL RESPONSE**

**MOTOR VEHICLE RESTRICTED FUND**

Motor Vehicle Highway 201114 and Motor Vehicle Highway Restricted are maintained in the same fund number 201. However, the City does have the Restricted Fund in a subaccount.

Motor Vehicle Highway Restricted Funds were used for disbursements that were not fund purposes of construction, reconstruction and preservation of the City's highways.

**CORRECTIVE ACTION PLAN**

I have provided Director of Public Works with Indiana Code as to how to correct this. The Director has agreed to established a unique appropriation code for the restricted dollars. The appropriation code will only be used for CRP activities.

*Cindy Gossard*  
\_\_\_\_\_  
(Signature) *Clerk Treasurer*  
\_\_\_\_\_  
(Title) *Oct 26, 2020*  
\_\_\_\_\_  
(Date)

CLERK-TREASURER  
CITY OF WESTFIELD  
EXIT CONFERENCE

The contents of this report were discussed on October 26, 2020, with Cindy Gossard, Clerk-Treasurer; Andrew Cook, Mayor; Joe Edwards, President of the Common Council; Cindy Spoljaric, Common Council member; Scott Frei, Common Council member; Jake Gilbert, Common Council member; Mike Johns, Common Council member; Joe Plankis, President of the Redevelopment Commission; Todd Burtron, Chief of Staff; and Brian Zaiger, City Attorney.

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BOARD OF PUBLIC WORKS  
CITY OF WESTFIELD

BOARD OF PUBLIC WORKS  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS

**CONTRACTS AND LEASES**

The same comment also appeared in prior Report B55979. The nature of issues found were over a span of time as noted in the comments. The timing of the audits for fiscal years 2018 and 2019 were such that the contents of Report B55979 were communicated to the city officials on September 29, 2020, 27 days prior to when the contents of this report were communicated. Recognition of these issues and pledge to correct any deficiencies may be found in the official response contained within the prior report. Corrective action is expected subsequent to the current report.

*Condition and Context*

On February 24, 2014, the City entered into an agreement (Management and Operation Agreement) with Indiana Bulls, Inc. for the management and operation of sports events and facilities.

On October 30, 2014, Indiana Bulls, Inc. assigned and transferred their rights, duties and obligations under the Management and Operation Agreement to Bullpen Tournaments, LLC (BPT). This Assignment and Assumption agreement was agreed to by the Mayor per his signature on this Assignment and Assumption Agreement.

Per review of the Common Council and Board of Public Works minutes from 2014, there was not any mention of either of these two agreements being presented for approval.

Pursuant to the agreements, the BPT became responsible for remitting specified allocations of fees collected for admissions, merchandise, and parking.

The City received collections from the BPT for event tickets, apparel, electricity, and indoor leasing fees in 2016 and 2017; however, in 2018, 2019, and 2020, the BPT only remitted electric and indoor leasing fees.

The City has not modified the agreement with the BPT. The Grand Park Director indicated that the City informally agreed to have the BPT perform maintenance in lieu of paying the collections designated in the agreement. The Grand Park Director provided a proposal with a target close date of January 1, 2017, which stipulated the following regarding fees and maintenance:

- The City and the BPT to share revenue related to advertising and sponsorship.
- The BPT to retain any and all commissions due to any hotel bookings due to the diamond sports operations.
- The BPT to assume any existing contract regarding food and beverage concessions, and will have the ability to operate the food and beverage concessions in the future.
- The BPT to discontinue paying the City for any admissions or parking revenues at Grand Park.
- The BPT to discontinue paying the City for any merchandise revenues other than apparel with the Grand Park brand at Grand Park.

BOARD OF PUBLIC WORKS  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS  
(Continued)

- The BPT to assume all responsibility for common area maintenance for the diamond sports and will include mowing and maintaining grass, cleaning of buildings, and removal of garbage. The City to remain responsible for all capital improvements and repairs on all vertical structures due to the normal use of the facility for all concession stands, dugouts, netting, backstops, etc., parking lot improvements, and maintenance of the ponds and existing trees surrounding the diamonds.
- The BPT will pay to the City, beginning December 31, 2017, \$360,000 of which the annual amount per the agreement will be deposited into a turf replacement escrow with the remainder being considered a lease payment to the City.

None of the parties to the proposal have signed the proposal. There was not any discussion of this informal agreement or proposal in the minutes of the Common Council, Board of Public Works, Redevelopment Commission, or Redevelopment Commission Authority.

We find no authority for the change to the terms of these agreements without the formal approval of a legislative board with authority to contract. Documentation regarding admissions, merchandise sales, and parking revenues received by the BPT was not provided; so, we could not determine the dollar amount of revenues that should have been remitted to the City for 2018 through 2019.

Furthermore, 18 campus use agreements, subleases, and other agreements were signed by either the Chief of Staff/Executive Director of the Redevelopment Commission or the Director of Grand Park; however, the minutes for the Redevelopment Commission for 2017 through 2020, are unclear regarding prior or subsequent approval of these agreements. General statements were recorded in the minutes that lease agreements for Grand Park had been approved; however, they were not specific as to which leases have been approved.

*Criteria*

Indiana Code 36-4-5-3 states in part:

"The executive shall:

- (1) enforce the ordinances of the city and the statutes of the state;
- (2) provide a statement of the finances and general condition of the city to the city legislative body at least once a year;
- (3) provide any information regarding city affairs that the legislative body requests;
- (4) recommend, in writing, to the legislative body actions that the executive considers proper; . . .
- (9) sign all bonds, deeds, and contracts of the city and all licenses issued by the city; and . . ."

Indiana Code 36-4-6-18 states: "The legislative body may pass ordinances, orders, resolutions, and motions for the government of the city, the control of the city's property and finances, and the appropriation of money."

BOARD OF PUBLIC WORKS  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS  
(Continued)

Indiana Code 36-7-14-8(g) states:

"The redevelopment commissioners may adopt the rules and bylaws they consider necessary for the proper conduct of their proceedings, the carrying out of their duties, and the safeguarding of the money and property placed in their custody by this chapter. In addition to the annual meeting, the commissioners may, by resolution or in accordance with their rules and bylaws, prescribe the date and manner of notice of other regular or special meetings."

Indiana Code 36-7-14-12.2(a) states in part:

"The redevelopment commission may do the following:

- (1) Acquire by purchase, exchange, gift, grant, condemnation, or lease, or any combination of methods, any personal property or interest in real property needed for the redevelopment of areas needing redevelopment that are located within the corporate boundaries of the unit.
- (2) Hold, use, sell (by conveyance by deed, land sale contract, or other instrument), exchange, lease, rent, or otherwise dispose of property acquired for use in the redevelopment of areas needing redevelopment on the terms and conditions that the commission considers best for the unit and its inhabitants.
- (3) Sell, lease, or grant interests in all or part of the real property acquired for redevelopment purposes to any other department of the unit or to any other governmental agency for public ways, levees, sewerage, parks, playgrounds, schools, and other public purposes on any terms that may be agreed on. . . ."

### ***CONTRACT NONCOMPLIANCE***

The same comment also appeared in prior Report B55979. The nature of issues found were over a span of time as noted in the comments. The timing of the audits for fiscal years 2018 and 2019 were such that the contents of Report B55979 were communicated to the city officials on September 29, 2020, 27 days prior to when the contents of this report were communicated. Recognition of these issues and pledge to correct any deficiencies may be found in the official response contained within the prior report. Corrective action is expected subsequent to the current report.

#### ***Condition and Context***

Pursuant to the agreement with Indiana Bulls, Inc. "within thirty (30) days after the end of each calendar month, the Bulls shall provide to the City an internally prepared, unaudited balance sheet and income statement for such calendar month and year-to-date reflecting the Bulls' operations at the Sports Campus . . ."

The BPT only provided the City one financial statement, which was dated as of May 31, 2020, and only included monthly activity and balances for January 2020 through May 2020.

Also pursuant to the agreement, the "Bulls and the City shall share the first four hundred thousand dollars (\$400,000) of admission revenues . . . For all Admission Net Revenues received in excess of four hundred thousand dollars (\$400,000) in any year, the Bulls shall receive seventy percent (70%) and the City shall receive thirty percent (30%) of such revenues. . . . Specifics were provided in the agreement related to merchandise and parking."

BOARD OF PUBLIC WORKS  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS  
(Continued)

The City invoiced the BPT for the revenues in 2017 and prior; however, documentation was not provided for audit regarding how the City determined the admissions, merchandise and parking fees billed.

The City entered into a sublease agreement with an effective date of December 1, 2011, with the BPT for a portion of the Field Sports Building. The term of the lease was "for the period commencing on the Effective Date and continuing for twelve (24) months . . . Lessee has an automatic renewal for 12 months unless either party gives 60 days' notice to terminate."

Per the lease, (Section 1.04 Holding Over) it states, in part: "If Tenant, with the prior written consent of Landlord, holds over and remains in possession of the Leased Premises after the expiration or earlier termination of this lease without the execution of an amendment to this Lease or a new lease, such tenancy will be on a month to month basis . . . with the exception of the Lease Term and the Base Rent . . . which will be calculated on a monthly basis at the rate equal to . . . (110%) of the Base Rent in effect as of the date of expiration . . ."

Per the rent section of the lease (Section 2.01 Base Rent) it states, in part: "Tenant will pay to Landlord as base rent . . . annual sum of Twenty Thousand four Hundred twelve Dollars (\$20,412) payable in monthly installments. . . . The next monthly payment of the Base Rent due and payable on December 1, 2018."

The BPT began paying \$1,701 monthly in March 2018. The sublease was not signed. It is unclear based upon the dates in this lease, and conflicting terms, if the BPT is complying or not, and if the rent being paid is correct.

*Criteria*

Payments made or received for contractual services must be supported by a written contract. Each unit is responsible for complying with the provisions of its contracts. (Accounting and Uniform Compliance Guidelines Manual for Indiana Cities and Towns, Chapter 1)

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CITY OF WESTFIELD  
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COMMON COUNCIL  
CITY OF WESTFIELD

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AUDIT RESULTS AND COMMENTS

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COMMON COUNCIL  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS  
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COMMON COUNCIL  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS  
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COMMON COUNCIL  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS  
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Per the rent section of the lease (Section 2.01 Base Rent), it states, in part: "Tenant will pay to Landlord as base rent . . . annual sum of Twenty Thousand four Hundred twelve Dollars (\$20,412) payable in monthly installments . . . The next monthly payment of the Base Rent due and payable on December 1, 2018."

The BPT began paying \$1,701 monthly in March 2018. The sublease was not signed. It is unclear based upon the dates in this lease, and conflicting terms, if the BPT is complying or not, and if the rent being paid is correct.

*Criteria*

Payments made or received for contractual services must be supported by a written contract. Each unit is responsible for complying with the provisions of its contracts. (Accounting and Uniform Compliance Guidelines Manual for Indiana Cities and Towns, Chapter 1)



Indiana State Board of Accounts  
302 West Washington Street, Room E 418  
Indianapolis, Indiana 46204

"OFFICIAL RESPONSE"

November 15, 2020

TO INDIANA STATE BOARD OF ACCOUNTS:

This letter is in response to your exit conference on The City of Westfield's 2019 audit. Most of your assertions are similar to the deficiencies in your 2018 management letter. These mostly concern the problems that surfaced in the relationship between the Redevelopment Commission and the Grand Park Facility. We have attempted to correct these problems in our attached Corrective Action Plan.

The basic problem is that the Redevelopment Commission "ceded its authority" to the City Administration to administer these contracts and agreements. This represents a lack of "citizen oversight" that was supposed to be in place. This lack of citizen transparency has resulted in most of the violations the State Board of Accounts has set forth. In short, the proper legislative body (City Council) has not been informed of these dealings as required by Indiana Statute. The long-term solution will be that the citizens of Westfield should have a much better set of "eyes" on these transactions with taxpayer money.

It is our understanding that the attorney for the City administration has or will issue an "OFFICIAL RESPONSE" letter in behalf of the City Council. He has not been granted any authority to answer for the City Council in this matter. We are represented by our own attorney in this matter.

James J. Edwards

A handwritten signature in cursive script that reads "James J. Edwards".

President, Westfield City Council

CITY OF WESTFIELD / 2728 EAST 171ST STREET / WESTFIELD, INDIANA 46074  
OFFICE 317.804.3004 / FAX 317.804.3190 / WESTFIELD.IN.GOV

CORRECTIVE ACTION PLAN FOR 2019 INDIANA STATE BOARD OF ACCOUNTS AUDITS

The Indiana State Board of Accounts has audited the 2019 records and contracts of the City of Westfield and its Redevelopment Commission, Redevelopment Authority, and Board of Public Works. This Audit was also a federal audit and the City is responsible for follow up and taking corrective actions on current year findings. It states that the City will submit a Corrective Action Plan to be incorporated within the Federal Reporting Package and forwarded to the Federal clearing house.

The State Board of Accounts has found deficiencies in the operation of the Redevelopment Commission. (See attached Schedule A) According to Accounting & Uniform Compliance Guidelines for Indiana Cities and Towns, payments made or received for contractual services must be supported by a written contract. Each unit is responsible for complying with the provisions of its contracts.

1. The City Council proposes a Resolution that the two City Council Appointees ask for and receive the written minutes and copies of all contracts and leases approved in future RDC meetings. The Council Appointees then would be asked to report these to the City Council on a quarterly basis.
2. Indiana Code IC 36-7-14-13 requires the Redevelopment Commission to file a report of its activities for the prior calendar year with the Mayor and the City Common Council. This report is due by April 15 of each year and must contain the following:

Revenues received

Expenses paid

Fund balances

Amount & maturity date of all outstanding obligations

Amount paid on outstanding obligations in each TIF district

List of Parcels included in each TIF district and the base value value and incremental assessed value for each parcel on the list

The City Council has never received this report in my 5 years on the Council. Indiana Code requires it. By law, this report must be required of the RDC.

James J. Edwards

President, Westfield City Council

CITY OF WESTFIELD / 2728 EAST 171ST STREET / WESTFIELD, INDIANA 46074  
OFFICE 317.804.3004 / FAX 317.804.3190 / WESTFIELD.IN.GOV

## **CONTRACTS NONCOMPLIANCE**

### *Condition and Context*

The same comment appeared in the prior Report.

Pursuant to the agreement with Indiana Bulls, Inc. "within thirty (30) days after the end of each calendar month, the Bulls shall provide to the City an internally prepared, unaudited balance sheet and income statement for such calendar month and year-to-date reflecting the Bulls' operations at the Sports Campus . . ."

BPT only provided the City one financial statement which was dated as of May 31, 2020, and only included month activity and balances for January 2020 through May 2020.

Also pursuant to the agreement, the "Bulls and the City shall share the first four hundred thousand dollars (\$400,000) of admission revenues . . . For all Admission Net Revenues received in excess of four hundred thousand dollars (\$400,000) in any year, the Bulls share receive seventy percent (70%) and the City shall receive thirty percent (30%) of such revenues. . . . Specifics were provided in the agreement related to merchandise and parking.

The City invoiced BPT for the revenues in 2017 and prior; however, documentation was not provided for audit regarding how the City determined the admissions, merchandise and parking fees billed.

The City entered into a sublease agreement with an effective date of December 1, 2011 with BPT for a portion of the Field Sports Building. The term of the lease was "for the period commencing on the Effective Date and continuing for twelve (24) months . . . Lessee has an automatic renewal for 12 months unless either party gives 60 days' notice to terminate.

Per the lease, (Section 1.04 Holding Over) it states, in part, "If Tenant, with the prior written consent of Landlord, holds over and remains in possession of the Leased Premises after the expiration or earlier termination of this lease without the execution of an amendment to this Lease or a new lease, such tenancy will be on a month to month basis . . . with the exception of the Lease Term and the Base Rent . . . which will be calculated on a monthly basis at the rate equal to . . . (110%) of the Base Rent in effect as of the date of expiration . . ."

Per the rent section of the lease (Section 2.01 Base Rent) it states, in part, "Tenant will pay to Landlord as base rent . . . annual sum of Twenty Thousand four Hundred twelve Dollars (\$20,412.00) payable in monthly installments. . . The next monthly payment of the Base Rent due and payable on December 1, 2018."

BPT began paying \$1,701 monthly in March 2018. The sublease was not signed. It is unclear based upon the dates in this lease, and conflicting terms if BPT is complying or not, and if the rent being paid is correct.

### *Criteria*

Payments made or received for contractual services must be supported by a written contract. Each unit is responsible for complying with the provisions of its contracts. (Accounting and Uniform Compliance Guidelines Manual for Indiana Cities and Towns, Chapter 1)

COMMON COUNCIL  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS

**CONTRACTS AND LEASES**

*Condition and Context*

The same comment appeared in the prior Report.

On February 24, 2014, the City entered into an agreement (Management and Operation Agreement) with Indiana Bulls, Inc. for the management and operation of sports events and facilities.

On October 30, 2014, Indiana Bulls, Inc assigned and transferred their rights, duties and obligations under the Management and Operation Agreement to Bullpen Tournaments, LLC (BPT). This Assignment and Assumption agreement was agreed to by the Mayor per his signature on this Assignment and Assumption Agreement.

Per review of the City Council and Board of Public Works minutes from 2014, there was not any mention of either of these two agreements being presented for approval.

Pursuant to the agreements, BPT became responsible for remitting specified allocations of fees collected for admissions, merchandise, and parking.

The City received collections from BPT for event tickets, apparel, electricity and indoor leasing fees in 2016 and 2017; however, in 2018, 2019, and 2020 BPT only remitted electric and indoor leasing fees.

The City has not modified the agreement with BPT. The Grand Park Director indicated that the City informally agreed to have BPT perform maintenance in lieu of paying the collections designated in the agreement. The Grand Park Director provided a proposal with a target close date of January 1, 2017 which stipulated the following regarding fees and maintenance:

- City and BPT to share revenue related to advertising and sponsorship
- BPT to retain any and all commissions due to any hotel bookings due to the diamond sports operations.
- BPT to assume any existing contract regarding food and beverage concessions, and will have the ability to operate the food and beverage concessions in the future.
- BPT to discontinue paying the City for any admissions or parking revenues at Grand Park.
- BPT to discontinue paying the City for any merchandise revenues other than apparel with the Grand Park brand at Grand Park.
- BPT to assume all responsibility for common area maintenance for the diamond sports and will include mowing and maintaining grass, cleaning of buildings, and removal of garbage. The City to remain responsible for all capital improvements and repairs on all vertical structures due to the normal use of the facility for all concession stands, dugouts, netting, backstops, etc., parking lot improvements and maintenance of the ponds and existing trees surrounding the diamonds.
- BPT will pay to the City beginning 12/31/17 \$360,000 of which annual amount per the agreement will be deposited into a turf replacement escrow with the remainder being considered a lease payment to the City.

None of the parties to the proposal have signed the proposal. There has not been any discussion of this informal agreement or proposal in the minutes of the City Council, Board of Public Works, Redevelopment Commission, or Redevelopment Commission Authority.

We find no authority for the change to the terms of these agreements without the formal approval of a legislative board with authority to contract. Documentation regarding admissions, merchandise sales

COMMON COUNCIL  
CITY OF WESTFIELD  
EXIT CONFERENCE

The contents of this report were discussed on October 26, 2020, with Cindy Gossard, Clerk-Treasurer; Andrew Cook, Mayor; Joe Edwards, President of the Common Council; Cindy Spoljaric, Common Council member; Scott Frei, Common Council member; Jake Gilbert, Common Council member; Mike Johns, Common Council member; Joe Plankis, President of the Redevelopment Commission; Todd Burtron, Chief of Staff; and Brian Zaiger, City Attorney.

REDEVELOPMENT COMMISSION  
CITY OF WESTFIELD

REDEVELOPMENT COMMISSION  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS

**FUND SOURCES AND USES**

*Condition and Context*

The City made two payments totaling \$625,000 to settle a lawsuit. The payments were made with tax increment financing (TIF) dollars and came from the Grand Junction TIF fund. However, the use of TIF money to settle a lawsuit is not statutorily permitted.

*Criteria*

Indiana Code 36-7-14-39(b)(3) states in part:

". . . property tax proceeds . . . shall be allocated to the redevelopment district and when collected, paid into an allocation fund 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 . . .
- (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.

REDEVELOPMENT COMMISSION  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS  
(Continued)

- (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 . . .
- (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 . . .
- (M) Expend money and provide financial assistance as authorized in section 12.2(a)(27) of this chapter.

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

Sources and uses of funds must be limited to those authorized by the enabling law, ordinance/ resolution, or grant agreement. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 1)

The uses of TIF funds are restricted to those set forth in the Indiana Code. The power of a redevelopment commission to expend such funds is limited to the express statutory powers as set forth in Indiana Code 36-7-14. (Redevelopment Commission of the Town of Munster, Indiana, v. Indiana State Board of Accounts and Paul D. Joyce, State Examiner of State Board of Accounts, 28 N.E.3d 272 (Ind. App., 2015) trans. denied, 34 N.E.3d 251)

## **CONTRACTS AND LEASES**

The same comment also appeared in prior Report B55979. The nature of issues found were over a span of time as noted in the comments. The timing of the audits for fiscal years 2018 and 2019 were such that the contents of Report B55979 were communicated to the city officials on September 29, 2020, 27 days prior to when the contents of this report were communicated. Recognition of these issues and pledge to correct any deficiencies may be found in the official response contained within the prior report. Corrective action is expected subsequent to the current report.

### *Condition and Context*

On February 24, 2014, the City entered into an agreement (Management and Operation Agreement) with Indiana Bulls, Inc. for the management and operation of sports events and facilities.

On October 30, 2014, Indiana Bulls, Inc. assigned and transferred their rights, duties, and obligations under the Management and Operation Agreement to Bullpen Tournaments, LLC (BPT). This Assignment and Assumption agreement was agreed to by the Mayor per his signature on this Assignment and Assumption Agreement.

Per review of the Common Council and Board of Public Works minutes from 2014, there was not any mention of either of these two agreements being presented for approval.

REDEVELOPMENT COMMISSION  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS  
(Continued)

Pursuant to the agreements, the BPT became responsible for remitting specified allocations of fees collected for admissions, merchandise, and parking.

The City received collections from the BPT for event tickets, apparel, electricity, and indoor leasing fees in 2016 and 2017; however, in 2018, 2019, and 2020, the BPT only remitted electric and indoor leasing fees.

The City has not modified the agreement with the BPT. The Grand Park Director indicated that the City informally agreed to have the BPT perform maintenance in lieu of paying the collections designated in the agreement. The Grand Park Director provided a proposal with a target close date of January 1, 2017, which stipulated the following regarding fees and maintenance:

- The City and the BPT to share revenue related to advertising and sponsorship.
- The BPT to retain any and all commissions due to any hotel bookings due to the diamond sports operations.
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None of the parties to the proposal have signed the proposal. There was not any discussion of this informal agreement or proposal in the minutes of the Common Council, Board of Public Works, Redevelopment Commission, or Redevelopment Commission Authority.

We find no authority for the change to the terms of these agreements without the formal approval of a legislative board with authority to contract. Documentation regarding admissions, merchandise sales, and parking revenues received by the BPT was not provided; so, we could not determine the dollar amount of revenues that should have been remitted to the City for 2018 through 2019.

Furthermore, 18 campus use agreements, subleases, and other agreements were signed by either the Chief of Staff/Executive Director of the Redevelopment Commission or the Director of Grand Park; however, the minutes for the Redevelopment Commission for 2017 through 2020, are unclear regarding prior or subsequent approval of these agreements. General statements were recorded in the minutes that lease agreements for Grand Park had been approved; however, they were not specific as to which leases have been approved.

REDEVELOPMENT COMMISSION  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS  
(Continued)

*Criteria*

Indiana Code 36-4-5-3 states in part:

"The executive shall:

- (1) enforce the ordinances of the city and the statutes of the state;
- (2) provide a statement of the finances and general condition of the city to the city legislative body at least once a year;
- (3) provide any information regarding city affairs that the legislative body requests;
- (4) recommend, in writing, to the legislative body actions that the executive considers proper; . . .
- (9) sign all bonds, deeds, and contracts of the city and all licenses issued by the city; and . . ."

Indiana Code 36-4-6-18 states: "The legislative body may pass ordinances, orders, resolutions, and motions for the government of the city, the control of the city's property and finances, and the appropriation of money."

Indiana Code 36-7-14-8(g) states:

"The redevelopment commissioners may adopt the rules and bylaws they consider necessary for the proper conduct of their proceedings, the carrying out of their duties, and the safeguarding of the money and property placed in their custody by this chapter. In addition to the annual meeting, the commissioners may, by resolution or in accordance with their rules and bylaws, prescribe the date and manner of notice of other regular or special meetings."

Indiana Code 36-7-14-12.2(a) states in part:

"The redevelopment commission may do the following:

- (1) Acquire by purchase, exchange, gift, grant, condemnation, or lease, or any combination of methods, any personal property or interest in real property needed for the redevelopment of areas needing redevelopment that are located within the corporate boundaries of the unit.
- (2) Hold, use, sell (by conveyance by deed, land sale contract, or other instrument), exchange, lease, rent, or otherwise dispose of property acquired for use in the redevelopment of areas needing redevelopment on the terms and conditions that the commission considers best for the unit and its inhabitants.
- (3) Sell, lease, or grant interests in all or part of the real property acquired for redevelopment purposes to any other department of the unit or to any other governmental agency for public ways, levees, sewerage, parks, playgrounds, schools, and other public purposes on any terms that may be agreed on. . . ."

REDEVELOPMENT COMMISSION  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS  
(Continued)

**CONTRACT NONCOMPLIANCE**

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Per the rent section of the lease (Section 2.01 Base Rent) it states, in part: "Tenant will pay to Landlord as base rent . . . annual sum of Twenty Thousand four Hundred twelve Dollars (\$20,412) payable in monthly installments. . . . The next monthly payment of the Base Rent due and payable on December 1, 2018."

The BPT began paying \$1,701 monthly in March 2018. The sublease was not signed. It is unclear based upon the dates in this lease, and conflicting terms, if the BPT is complying or not, and if the rent being paid is correct.

REDEVELOPMENT COMMISSION  
CITY OF WESTFIELD  
AUDIT RESULTS AND COMMENTS  
(Continued)

*Criteria*

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November 19, 2020

**Brian J. Zaiger**  
**Direct Dial: (317) 238-6266**  
**E-mail: bzaiger@kdlegal.com**

Lisa Dungan  
Field Examiner  
Indiana State Board of Accounts  
302 W. Washington Street  
Indianapolis, IN 46204

Re: 2019 City of Westfield Audit

Ms. Dungan,

I am writing to respond to the various issues that you had identified during your audit of the City of Westfield, Indiana ending in October of 2020. It is also my request that this response be posted with the findings of the SBOA.

First, as for the Westfield Redevelopment Commission (“RDC”) you identified a payment of the RDC in settlement of a potential lawsuit for a breach of a lease. You outlined and stated I.C.36-14-39(b)(3) in your report. The City is well aware of this statute and have had ongoing discussions with Todd Caldwell and Paul Lottes of your office regarding this issue. I was fully informed that the function of the SBOA and the audit in general is to identify anything that does not fall into that statute specifically. I have attached a letter that had been prepared quite a while ago and updated with the date of the exit interview (ex.1) explaining the rationale that seems quite clear to me that would authorize this payment. I have also attached a memo that was sent to the Westfield Clerk-Treasurer dated December 9, 2019 regarding this very issue (ex. 2). Finally, I have attached the string of emails between myself and various members of your office discussing this issue (ex.3). At the end of the discussion and phone calls I fully understood that the position of the SBOA was that anything outside of I.C.36-14-39(b)(3) would be identified in an audit. The City was fully aware of this position and thus was able to prepare the letter and memo in preparation of the legal interpretation necessary for an RDC in the State of Indiana to function in this manner. It is also my understanding that situations like this are forwarded to the legislature for consideration of changes to the laws as they exist today. I do not think that this requires a remedial action.

The second issue identified were a collection of contractual agreements that were identified as being unclear on their authorization by the RDC. All of the contracts deal with the RDC and the operations at Grand Park. The audit did not mention the RDC Resolution 1-17 that created the position of Executive Director delegating the authority to coordinate the necessary tasks and duties necessary to conduct business at Grand Park (ex. 4). In fact, he may also delegate his

November 19, 2020

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authority to the Director of Grand Park. It is the normal procedure to have the decisions of the authorized individuals to seek ratification of acts done pursuant to that authority at the earliest opportunity from the RDC in regular meetings. It was reported in the exit interview that many of the items listed in the report were identified because the approvals are not readily apparent by the auditor. Additionally, there were two contracts identified that were not executed. Those contracts are attached. They were available upon request or inquiry since the time of execution. It would appear that the best way to remedy these matters are by a Resolution adopted by the RDC ratifying all of the contracts and leases identified in the audit. One shall be before the RDC at the earliest convenience.

The third issue dealt with the relationship between the RDC and Indiana Bulls. Most specifically the agreement between them that was not well documented. Although the specifics are too numerous to outline herein it can be said that a change was made in the executed contract to allow the Bulls the opportunity to administer various landscaping endeavors that were required by the RDC in exchange, the RDC would forego the sharing of gate fees charged. As I understand the position of the SBOA, it is their position that any contractual relationship must be written and properly executed to avoid being identified pursuant to Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 1. It must be noted that an oral contract of which the parties agree on all terms is a valid contractual relationship under Indiana law and the identification of this by the SBOA is merely pursuant to its policies. It is my understanding a change in the executed management agreement was being contemplated. The oral contractual change was to determine if it was beneficial to the RDC and Grand Park without a long term commitment. The fact that it was beneficial to the RDC in an amount of approximately \$200,000 indicates that indeed it was beneficial to the RDC. The Parties are currently in discussions regarding an updated agreement that will be executed. As such, there is no remedial action plan necessary as this matter will be executed in the manner preferred by the SBOA.

Sincerely,

A handwritten signature in black ink that reads 'Brian J. Zaiger'.

Brian J. Zaiger

Enclosures

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*Enclosures will be available to view upon request by contacting the Indiana State Board of Accounts*

REDEVELOPMENT COMMISSION  
CITY OF WESTFIELD  
EXIT CONFERENCE

The contents of this report were discussed on October 26, 2020, with Cindy Gossard, Clerk-Treasurer; Andrew Cook, Mayor; Joe Edwards, President of the Common Council; Cindy Spoljaric, Common Council member; Scott Frei, Common Council member; Jake Gilbert, Common Council member; Mike Johns, Common Council member; Joe Plankis, President of the Redevelopment Commission; Todd Burtron, Chief of Staff; and Brian Zaiger, City Attorney.