

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

SUPPLEMENTAL COMPLIANCE REPORT

OF

CITY OF ELWOOD

MADISON COUNTY, INDIANA

January 1, 2019 to December 31, 2020



FILED
11/05/2021

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SCHEDULE OF OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Clerk-Treasurer	Allison M. Roby	01-01-19 to 12-31-21
Mayor	Todd Jones	01-01-19 to 12-31-21
President Pro Tempore of the Common Council	Timothy A. Roby	01-01-19 to 12-31-21
President of the Board of Public Works and Safety	Todd Jones	01-01-19 to 12-31-21



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AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF THE CITY OF ELWOOD, MADISON COUNTY, INDIANA

This report is supplemental to our audit report of the City of Elwood (City), for the period from January 1, 2019 to December 31, 2020. 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/.

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 Result and Comment contained herein describes the identified reportable instance 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 Result and Comment, incorporated within this report, was not verified for accuracy.

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

October 18, 2021

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REDEVELOPMENT COMMISSION
CITY OF ELWOOD

REDEVELOPMENT COMMISSION
CITY OF ELWOOD
AUDIT RESULT AND COMMENT

USE OF TAX INCREMENT FINANCING (TIF) FUNDS

The same comment also appeared in the prior Report B53877.

Condition and Context

The City established a TIF allocation fund (Economic Redevelopment Capital fund) as authorized in Indiana Code 36-7-4-39. We identified disbursements made during the audit period from the TIF allocation fund that were considered unallowable. The following is a schedule of those unallowable disbursements from the TIF allocation fund:

Description	Amount
Golf Course Expenses	\$ 594,648
City Capital Expenses	76,117
Street Sweeper Lease	74,277
Police Department Expenses	47,369
Building Commission Office Employee Salary	41,688
Redevelopment Commission Maintenance Expenses	48,914
Redevelopment Commission Operating Expenses	<u>1,700</u>
Total	<u><u>\$ 884,713</u></u>

Criteria

A Redevelopment Commission has the duties set forth in Indiana Code 36-7-14-11, which provides for the investigation, selection, acquisition development, and disposal of property in "areas needing redevelopment." The powers granted to a redevelopment commission in Indiana Code 36-7-14-12.2 allow the commission to develop property in the areas needing redevelopment and to carry out other activities "for redevelopment purposes." "Redevelopment" includes activities contained in Indiana Code 36-7-1-18.

The general operating costs of the City should be paid from the City's General Fund as set forth in the Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 4:

GAAFR defines the General Fund as the fund used to account for all financial resources except those required to be accounted for in another fund. The General Fund is the general operating fund of the municipality. Tax revenues and other receipts that are not allocated by law or contractual agreement to another fund are accounted for in this fund. The general operating expenditures of the municipality are paid from the General Fund.

To summarize, the General Fund shall be used for current general operations of the city or town. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 4)

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 for that allocation area that may be used by the redevelopment district only to do one (1) or more of the following:

REDEVELOPMENT COMMISSION
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AUDIT RESULT AND COMMENT
(Continued)

- (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.
- (K) Reimburse public and private entities for expenses incurred in training employees of industrial facilities that are located:
 - (i) in the allocation area;
 - (ii) 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. . . .
- (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."

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(Continued)

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. The use of TIF funds for ongoing maintenance of redeveloped property is not an expressly or impliedly permitted use, except as provided in Indiana Code 36-7-1-18(7) for repairing and maintaining buildings acquired before redevelopment is complete. (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)



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OFFICIAL RESPONSE

October 28, 2021

(Via email: officialresponse@sboa.in.gov; ldavid@sboa.in.gov)

State Board of Accounts
302 Washington Street, Room E 418
Indianapolis, IN 46204-2765
ldavid@sboa.in.gov

RE: City of Elwood's Response to October 2021 SBOA Audit: OFFICIAL RESPONSE

Dear Sir or Madam:

As counsel to the City of Elwood, we are in receipt of the Indiana State Board of Accounts ("SBOA") October 2021 Audit Results and Comments with respect to the Elwood Redevelopment Commission (ERC). The SBOA's audit focused on what it deemed unallowable disbursements from the ERC's Tax Increment Financing Fund.

Golf Course Expenses

As reflected in Exhibit A attached, the City has been in correspondence with Mr. Todd Caldwell of your office to determine a way to handle such expenses that the SBOA considers acceptable, and it is the City's understanding that following the approach outlined in Exhibit A will be acceptable to the SBOA.

City Capital Expenditures

The City had concluded at the time such expenditures were made that they were legal and proper. As part of the Corrective Action Plan process, the City will seek more specific clarification on the SBOA's position on such expenditures.

Street Sweeper Lease

The City had concluded at the time such expenditures were made that they were legal and proper. As part of the Corrective Action Plan process, the City will seek more specific clarification on the SBOA's position on such expenditures.

Police Department Expenses

The City is of the firm opinion that capital expenditures relating to enhancing public safety are proper expenditures of TIF revenues. As part of the Corrective Action Plan process, the City will seek more specific clarification on the SBOA's position on such expenditures.

Building Commission Office Employee Salary

The City had concluded at the time such expenditures were made that they were legal and proper. As part of the Corrective Action Plan process, the City will seek more specific clarification on the SBOA's position on such expenditures.

Redevelopment Commission Maintenance Expenses

The City is of the firm opinion that the capital expenditures made by the ERC in this category were proper expenditures of TIF revenues. As part of the Corrective Action Plan process, the City will seek more specific clarification on the SBOA's position on such expenditures. Our legal analysis is as follows.

We believe that the current procedures concerning expenditures by the ERC are within the guidelines set by the Indiana Court of Appeals in Town of Munster, 28 N.E. 3rd 272 (Ind. App. 2015).

As indicated by the Court of Appeals, "language...instructing the commission to dispose of the redeveloped properties once redevelopment is complete, ...is indicative of the General Assembly's intention that TIF Funds no longer be used once redevelopment is complete." (emphasis added)

Lawn Care Maintenance

Of the "Maintenance Expenses" which the audit noted as potentially objectionable, we believe that such expenditures can reasonably be characterized as maintenance type expenses of the type that are not disallowed under the Munster case. Actually, most are clearly "Lawncare Maintenance" (i.e. mowing).

However, these expenses related to properties on which the redevelopment is not complete now (or was not completed at the time the expenses were incurred).

In recent years, the Redevelopment Commission has demolished a number of houses as part of the Blight Elimination Program (BEP). According to the BEP, once a property is cleared, it is listed for sale, so that it can be returned to the tax rolls. As of this date, of the some of the houses, but not all, have been sold, and are currently again generating tax revenue for the community.

There are currently a number of new homes and there are additional properties on which various developers have made proposals of more new residential construction in the near future.

The procedures involving the BEP program concerning acquiring property, demolished structures, and then sale of the property are very specific (including, appraisals, bidding, etc.).

Unfortunately, not all vacant properties from which the structures have been demolished sell immediately (and, of course, there is some delay merely caused by the appraisal/bidding process). During this delay until sale the properties must be maintained – including have the grass and weeds mowed. (i.e. Lawncare Maintenance)

The BEP expenses include personnel costs for administration of the BEP program pending sale, and, of course actually mowing the properties – but only until sale.

None of the “Lawncare Maintenance” paid by ERC were for City Parks or other City property, and all have ceased or will cease when the properties are sold or transferred.

Other Equipment

The Elwood Economic Development Plan includes multiple goals, such as “to stimulate growth in municipal property tax revenues”, “to stimulate Neighborhood Revitalization and to stabilize residential property values”, to “develop . . . strategies necessary to make Elwood more competitive in attracting and capturing investment by new industries . . .”

The other equipment mentioned in the report is utilized in cleanup related to the demolitions prior to sale.

Redevelopment Commission Operating Expenditures

The City had concluded at the time such expenditures were made that they were legal and proper. As part of the Corrective Action Plan process, the City will seek more specific clarification on the SBOA’s position on such expenditures.

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Sincerely,

GRAHAM, FARRER & WILSON, P.C.


MICHAEL E. FARRER


JEFFREY K. GRAHAM

MEF:glw
Enclosure

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*Exhibit A will be available to view
upon request to the Indiana State
Board of Accounts.*

REDEVELOPMENT COMMISSION
CITY OF ELWOOD
EXIT CONFERENCE

The contents of this report were discussed on October 18, 2021, with Allison M. Roby, Clerk-Treasurer; Todd Jones, Mayor; and Timothy A. Roby, President Pro Tempore of the Common Council.