



Office of Missouri State Auditor
Nicole Galloway, CPA

BaratHaven
Community Improvement District



Nicole Galloway, CPA
Missouri State Auditor

CITIZENS SUMMARY

Findings in the audit of BaratHaven Community Improvement District

Property Taxes	BaratHaven Community Improvement District (CID) officials never certified the district's property tax rate with the State Auditor's Office (SAO) as required by Section 137.073, RSMo. As a result, all property taxes imposed by the district and collected by the St. Charles County Collector totaling approximately \$1,325,000 are improper, and the CID imposed property taxes of \$34,400 in excess of what was allowed by the state constitution. In addition, the CID did not identify errors in the assessment rolls provided to the County Collector, allowing commercial property within the district boundaries to not be assessed property taxes for the past 3 years.
Financial Condition	The CID is unable to meet its annual debt service requirements. CID revenues are not sufficient to pay semi-annual interest payments, and no principal payments have been made in the more than 10 years since the district was created.
Allocation of Project Costs	The CID did not maintain, and could not provide, documentation to support how project costs were allocated between the CID and the BaratHaven Transportation Development District.

In the areas audited, the overall performance of this entity was **Fair**.*

*The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

- Excellent:** The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.
- Good:** The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.
- Fair:** The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.
- Poor:** The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

BaratHaven Community Improvement District

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NICOLE GALLOWAY, CPA **Missouri State Auditor**

William Laskowsky, Chairman
and
Board of Directors
BaratHaven Community Improvement District
Dardenne Prairie, Missouri

We have audited certain operations of the BaratHaven Community Improvement District as authorized under Section 67.1471.5, RSMo. The scope of our audit included, but was not necessarily limited to, the year ended December 31, 2016. The objectives of our audit were to:

1. Evaluate the district's internal controls over significant management and financial functions.
2. Evaluate the district's compliance with certain legal provisions.
3. Evaluate the economy and efficiency of certain management practices and operations, including certain financial transactions.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

For the areas audited, we identified no significant deficiencies in internal controls, non-compliance with legal provisions, and the need for improvement in management practices and procedures.

The accompanying Management Advisory Report presents our findings arising from our audit of the BaratHaven Community Improvement District.

Nicole R. Galloway, CPA
State Auditor

The following auditors participated in the preparation of this report:

Director of Audits: Robert E. Showers, CPA, CGAP
Audit Managers: Dennis Lockwood, CPA
Wayne Kauffman, MBA, CPA
Audit Staff: Mariyam Raziyeva

BaratHaven Community Improvement District

Introduction

Background

The BaratHaven Community Improvement District (CID) is located in the City of Dardenne Prairie. The CID was organized in February 2006 by an ordinance passed by the city's Board of Alderman. Pursuant to the petition filed requesting the formation of the district, the members of the CID Board of Directors are appointed by the Mayor with the consent of the Board of Alderman.¹

The CID was formed for the purpose of constructing public infrastructure improvements to facilitate a mixed-use development that was expected to include 159 single-family residences, 89 single-family detached villas, a 16 acre lake for fishing and recreation, a 97 acre park, and 17 acres of commercial/retail space to provide services, shops, and restaurants. The CID has a fiscal year end of December 31 and had an independent audit performed for the year ended December 31, 2016.

Obligations

Notes with a principal amount of \$1,641,000 were issued to fund the improvements and the costs of issuance. The notes accrue interest at 9.25 percent and mature on December 28, 2026.

Revenues

In May 2006, the qualified voters² (property owners) of the CID approved the imposition of a property tax of up to \$1 per \$100 assessed valuation (AV) for a period of 40 years. The CID Board passed resolutions setting the property tax rate at \$0.8555 per \$100 of AV for 2006 through 2010; and increased the property tax rate to \$1 per \$100 of AV effective in 2011. The CID calculated the amount of property tax owed based on assessment information provided by the St. Charles County Assessor. The CID then provided the amount of property tax owed by parcel to the St. Charles County Collector who collect and remit the property tax to the CID.

Governance

CID Board members serve 3 year terms and serve without compensation. Members of the Board at December 31, 2016, were:

¹ The petition requires two of the directors to be appointed in accordance with the annexation agreement between the city, Creek Valley, LLC, and BaratHaven Development, LLC; one of the directors from the commercial class as provided for in the Declaration of Covenants, Conditions and Restrictions for the BaratHaven Development (the "Master Declaration"), one of the directors from the Residential Class as provided in the Master Declaration, and one of the directors from either the Commercial or the Residential Class as provided for in the Master Declaration.

² Since there were not any registered voters who resided within the boundaries at the time of the election, the qualified voters were the developers.



BaratHaven Community Improvement District Introduction

Name	Term Expires
William Laskowsky (1) (4)	February 15, 2016 (6)
Craig Stankovich (2) (5)	February 15, 2018
Tom Vonderheid (3) (5)	February 15, 2016 (6)
Dale Grove (5)	February 15, 2020
Michael Luna (5)	February 15, 2018

- (1) Chairman
- (2) Vice Chairman and Secretary
- (3) Treasurer
- (4) Representative of a commercial property owner
- (5) Resident of the district
- (6) Serving pursuant to Section 67.1451.4, RSMo, until a successor is appointed. The terms were subsequently extended to expire on February 15, 2020.

Scope and Methodology

The scope of our audit included, but was not necessarily limited to, the year ended December 31, 2016.

We reviewed relevant statutes and CID agreements; including state law,³ the petition to form the CID, the ordinance forming the CID, the amended intergovernmental agreement between the CID and the city, the amended and restated annexation agreement between the developers and the city, the trust indenture between CID and the trustee, and the bylaws of the CID. Our review of these statutes and agreements covered the legal responsibilities of the district and the CID Board. In addition, we reviewed documentation related to the notes issued to fund the project to gain an understanding of the amount of liabilities issued and the terms of the liabilities. We also reviewed meeting minutes to obtain an understanding of actions taken by the Board.

We held discussions with the district administrator and legal counsel representing the district; the City Clerk and the City Attorney for the City of Dardenne Prairie; as well as the Assistant County Collector, County Assessor, and Assistant County Assessor for St. Charles County. The purpose of these conversations was to obtain an understanding of the CID's operations and decisions made by the CID Board as well as obtaining evidence of compliance with certain requirements and obtain information to assess the significance of issues identified in the audit. We obtained assessed values from the county and worked with the CID in order to determine the CID's property tax rate ceiling for 2017.

We obtained an understanding of the internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We also obtained an

³ Including Sections 67.010, 67.1401 through 67.1571, 105.145, and 137.037, RSMo.



BaratHaven Community Improvement District Introduction

understanding of legal provisions that are significant within the context of the audit objectives, and we assessed risk that illegal acts, including fraud, and violation of applicable contract or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of non-compliance significant to those provisions.

BaratHaven Community Improvement District Management Advisory Report State Auditor's Findings

1. Property Taxes

The BaratHaven Community Improvement District (CID) officials never certified the district's property tax rate with the State Auditor's Office (SAO). As a result, all property taxes imposed by the district and collected by the St. Charles County Collector totaling approximately \$1,325,000 are improper. In addition, the CID does not adequately monitor the assessment rolls provided by the County Assessor for accuracy. As a result, several commercial properties within the district were not assessed the CID property tax for 3 years.

1.1 Improper taxation

CID officials did not certify the district's property tax rate with the SAO as required by Section 137.073, RSMo. As a result, the CID has imposed, and the County Collector has collected, improper property taxes totaling approximately \$1,325,000 from 2006 to 2016. While the majority of the taxes collected would be allowable if the tax rate was certified, the district imposed and received approximately \$34,400 in property taxes in excess of the tax rate ceilings that would have been in effect if the CID had annually certified the property tax rates as required.

The qualified voters⁴ of the district approved the imposition of a real property tax on all real property within the district at a rate of not more than \$1 per \$100 assessed valuation for a period of up to 40 years at an election on May 2, 2006. The Board of Directors passed resolution 06-012 imposing the property tax at \$0.8555 per \$100 of assessed valuation on August 2, 2006.

In 2006, the CID's administrator sent letters to the County Registrar's Office and County Collector informing those officials of the property tax to be levied by the CID as well as providing a copy of resolution 06-012 and a map of the district boundaries. However, the CID did not provide the county with the proper information,⁵ including the property tax ceiling, to substantiate the property tax rate complied with state law. The county improperly treated the property tax as a special assessment. State law does not require special assessments to be certified by the SAO. The following year, the County Collector requested the CID to certify the tax as a special assessment, which the Chairman of the Board confirmed, and the property tax was never certified by the SAO. When a political subdivision fails to certify its tax rate, no property tax rate should be entered into the county property tax collection system. As a result, all property taxes collected on behalf of the CID were improperly imposed and collected.

⁴ Since there were not any registered voters who resided within the boundaries at the time of the election, the qualified voters were the developers under Section 67.1401.2(14), RSMo.

⁵ 15 CSR 40-3.120 requires submission of a tax rate summary page, a computation of reassessment growth and rate (Form A), the new voter approved tax rate or tax rate increase (Form B), debt service information (Form C), and recoupment information for political subdivisions (Form G).



BaratHaven Community Improvement District
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The process of the CID not providing the required information to the county, neither the CID nor the county submitting the property tax information to the SAO for certification, and the county placing an uncertified tax rate on the tax roll continued annually until we identified the violation during the current audit. The amount of improper property taxes collected by the County Collector from 2006 through 2016 totaled \$1,325,225. Of that amount, \$1,284,198 was remitted to the CID and the remaining amount was withheld for Collector Commissions or taxes paid under protest.

Taxes collected in excess of allowable ceiling

Based on annual assessed value data for the district, the tax rate ceilings were recalculated. We concluded the CID imposed a property tax rate greater than the state constitution would have allowed if the district had certified its rates with the SAO for 4 of the last 5 years, resulting in excess collections of \$34,397. See the table below for additional detail.

Year	Collections (1)	Imposed	Ceiling	Collection
2012	\$ 140,676	1.00	0.9837	\$ 2,293
2014	154,321	1.00	0.9879	1,867
2015	163,264	1.00	0.9177	13,437
2016	\$ 188,556	1.00	0.9109	16,800
Total Excess Collections				\$ <u>34,397</u>

(1) The amount collected by the St. Charles County Collector during the specific period and does not reflect actual revenues to the CID.

State law⁶ requires each political subdivision levying a property tax to certify the tax rate with the SAO and prohibits county collectors from collecting taxes that have not been certified. Completing the certification process provides assurance to the taxing entity that the tax rate being charged is in accordance with the constitution and state law.

1.2 Inaccurate tax rolls submitted to the county

The CID did not identify errors in the assessment rolls provided to the County Collector. As a result, four commercial properties within the district boundaries have not been charged the property tax for the past 3 years.

The district's administrator receives the assessment roll for the parcels within the district boundaries from the County Assessor. The administrator then applies the property tax rate, currently \$1 per \$100 of assessed valuation, to the parcels and submits that listing to the County Collector to collect the property taxes. While the administrator indicated a detailed review was performed, errors were not corrected on the listing before it was submitted to the County Collector. Four commercial properties were not

⁶ Section 137.073, RSMo.



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charged the CID property tax from 2014 through 2016 because the assessed valuations for these properties were set at \$0. The owners of these properties were not assessed \$6,389 in CID property taxes due to this error.

The property tax ballot approved by the qualified voters imposes a real property tax upon all real property within the district. Ensuring all information provided to the County Collector is accurate and all eligible real property is subject to the property tax helps ensure tax revenues are maximized and taxes are charged and collected fairly.

Recommendations

The CID Board:

- 1.1 Consult with legal counsel to determine how to remedy the situation regarding the improperly collected property taxes. Annually certify the property tax rate going forward.
- 1.2 Work with the county to ensure all non-exempt parcels within the district are charged the property tax.

Auditee's Response

- 1.1. *The district has consulted with legal counsel and will annually certify the property tax rate going forward.*

According to the county's Director of Finance, the property tax certification process is typically initiated when a political subdivision notifies the county of the imposition of a real estate tax levy. As stated in the SAO's findings, the district provided such notice to the county in 2006. However, the county improperly treated the property tax as a special assessment and, as such, did not provide the district with the various forms that were required to obtain certification of the property tax by the SAO, nor did the district independently complete such forms. From that time forward, the failure to certify the property tax rates with the SAO was a technical oversight on the part of the district and the county; there was no malicious intent on the part of any of the individuals involved. As soon as the SAO noted this issue during its audit, the district has worked with the county and the SAO to properly certify the property tax rate going forward.

In consultation with its legal counsel, the district has determined that it is unable to retroactively certify the property tax rates for prior years. However, to the extent that the SAO has determined that the district collected approximately \$34,397 in property taxes in excess of the tax rate ceilings that would have been in effect if the district had certified its property tax rates, the district's board of directors will offer a refund to taxpayers in the amount of the excess collections during the tax years in question (2012, 2014, 2015 and



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2016). Refunds will be made available through the district's administrator.

- 1.2 *The district will work with the county to ensure all non-exempt parcels within the district are charged the property tax. The district monitors the assessments on an annual basis and questioned the County Assessor regarding the assessment of the four parcels in question. The parcels appeared as having zero value in the tax years 2014-2016. Issues with the commercial property assessments appeared after a software change at the County Assessor's office. The district will pursue more aggressively in the future.*

2. Financial Condition

The CID is unable to meet its annual debt service requirements. CID revenues are not sufficient to pay semi-annual interest payments, and no principal payments have been made in the more than 10 years since the district was created. This situation is a result of the retail development portion of the project not materializing. As of December 31, 2016, accrued but unpaid interest totaled \$806,187.

The CID issued notes totaling \$1,641,000 to finance the district projects, including 'pre-approval' interest expenses⁷ and to pay for the cost of issuance. The notes were issued between December 2006 and October 2012 at an interest rate of 9.25 percent. To date, no principal payments have been made on the notes. From the period of 2009 through 2015, the CID received \$914,748 of property tax revenue. During that time, the CID paid interest expense of \$832,024. That amount was still not enough to satisfy the annual interest expense because the accrued but unpaid interest increased from \$383,661 to \$734,559 during that period.⁸ The notes mature on December 28, 2026. Based on the current tax base and revenue potential for the district, it is unlikely the note holders will be repaid the full amount owed.

Planning documents show plans for retail and office space development, however, such development did not occur. Based on revenue projections prepared by the district, the planned retail and office space development would have increased CID revenues enough when combined with the CID personal property tax to meet the debt service requirements. Since the primary development to occur was the residential development, the property taxes paid by those residents are the primary funding source available for

⁷ The developers charged the CID interest on the project costs funded by the developers and then later reimbursed by the CID. The pre-approval interest rate was 8 percent compounding monthly from the time the developers paid the invoice until the time the CID approved reimbursement to the developers. At this time, the CID Board consisted of the developers or their representatives.

⁸ Based on information in the CPA audited financial statements and provided by the trustee managing the notes.



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the CID debt payments.⁹ The CID property taxes paid by these residents is insufficient to meet the annual interest expense requirements.

Recommendations

The CID Board maximize revenues where possible to pay current outstanding debt.

Auditee's Response

The CID Board will continue to maximize revenues where possible to pay its debt. The district's board of directors adopts an annual budget. It has limited annual operating expenses to roughly 5 percent of total revenues, thereby allowing it to apply the remainder of funds to the payment of debt service obligations. At the time that the district issued its debt in 2006, the district performed an analysis to determine how much tax revenue would be generated within the district and the amount of debt it could reasonably expect to repay. This information was used as the basis for sizing the district's debt. Like most such analyses, the district's was based upon forward-looking assumptions about the future mixed-use development that would occur within the district. Although much of the residential development has occurred, little of the commercial development has occurred as originally contemplated. Since the recession of 2008-9, the continuing contraction of the retail segment has hindered commercial development within the district. The district has sought and will continue to seek strategies as to how to restructure the current debt for better payoff.

3. Allocation of Project Costs

The CID did not maintain and could not provide documentation to support how project costs were allocated between the CID and the BaratHaven Transportation Development District (TDD).¹⁰ More than \$4.2 million in total project costs were allocated between the TDD and the CID.

The BaratHaven development project included transportation and other infrastructure improvements with a total estimated project cost at \$4.2 million. The TDD was created to fund the transportation-related costs, while the CID was created to fund the remaining public improvement costs, according to the Board's legal counsel. Legal counsel for both the TDD and CID allocated approximately \$2.6 million of costs to the TDD, and approximately \$1.6 million of costs to the CID. While the CID Board reviewed and approved cost certifications with supporting documentation for all the \$4.2 million in project costs, there was no review of the cost allocation to ensure only non-transportation costs were allocated to the CID. The Board could not provide us a detailed listing of the project costs allocated to the CID.

⁹ An insignificant amount of interest income is also earned by the CID.

¹⁰ The TDD was established to collect a sales tax. However, since no retail businesses have moved into the district's boundaries, the TDD has not collected any sales tax revenues.



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The Board's involvement in the allocation process is necessary to ensure the district is only responsible for CID-related expenses. Without appropriate documentation to support how the costs were allocated between the CID and the TDD, there is a risk the CID was allocated costs that should have been allocated to the TDD.

Recommendation

The CID Board ensure the allocation of project costs between political subdivisions is documented and retained for future projects.

Auditee's Response

The district will ensure that documentation regarding the allocation of project costs between political subdivisions is retained for any future projects, although none are contemplated. The district provided the SAO with all invoices submitted to and approved by the district's Board of Directors along with a schedule of the allocation of project costs between the CID and the TDD. However, during its audit, the SAO requested that the district provide account coding of invoices to serve as documentation of how each individual invoice was allocated between the CID and the TDD. Such invoices are over 10 years old and neither the district's administrator nor legal counsel was able to locate such documentation in their records. Legal counsel indicated that, at the time such invoices were submitted to the district's Board of Directors, legal counsel reviewed each individual invoice in order to determine whether such costs were transportation-related (and, therefore, allocated to the TDD) or were not transportation related (and, therefore, allocated to the CID). To the extent that there were invoices that contained soft costs that were partially transportation-related and partially not transportation-related, legal counsel indicated that such invoices were allocated pro-rata to the TDD and the CID on the same basis as the underlying construction costs were allocated to the TDD and the CID.

BaratHaven Community Improvement District

Statement of Revenues, Expenditures, and Changes in Fund Balance

Year Ended December 31, 2016

REVENUES	
Property taxes	\$ 160,964
Interest income	3
Total Revenues	<u>160,967</u>
EXPENDITURES	
Debt service interest	148,184
Administration	5,000
Audit services	2,400
Trustee fees	1,743
Insurance	1,538
Legal	1,100
Banking	182
Total Disbursements	<u>160,147</u>
REVENUES OVER (UNDER) EXPENDITURES	820
Fund balance, beginning of year	<u>2,110</u>
Fund balance, end of year	<u>\$ 2,930</u>