



Office of Missouri State Auditor
Nicole Galloway, CPA

**Ward Parkway Center
Community Improvement District**



Nicole Galloway, CPA
Missouri State Auditor

CITIZENS SUMMARY

Findings in the audit of Ward Parkway Center Community Improvement District

Conflict of Interest	Conflicts of interest were noted in the approval of payments for construction management services, and the Ward Parkway Center Community Improvement District (CID) Board did not utilize a competitive process to select a vendor for such services. The Executive Director of the CID Board approved over \$1.2 million in construction management payments to companies she was employed by or to companies that share common ownership with her employer. The companies awarded the construction management services contracts have also employed or currently employ all current and past members of the CID Board of Directors.
Expenditures	The CID Board does not review or approve any project-related expenditures of the district. Payments to the developer are approved only by the CID Executive Director.
Non-Compliance with State Law	The CID Board violated state law by failing to timely submit the required performance and financial reports to the appropriate entities and failing to adopt an annual budget within the required time frame.

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.

Ward Parkway Center Community Improvement District

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NICOLE GALLOWAY, CPA **Missouri State Auditor**

Jeff Leeper, Chairman
and
Board of Directors
Ward Parkway Center Community Improvement District
Kansas City, Missouri

We have audited certain operations of the Ward Parkway Center 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 April 30, 2017. 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 procedures, 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 (1) significant deficiencies in internal controls, (2) non-compliance with legal provisions, and (3) the need for improvement in management practices and procedures. The accompanying Management Advisory Report presents our findings arising from our audit of the Ward Parkway Center Community Improvement District.

Nicole R. Galloway, CPA
State Auditor

The following auditors participated in the preparation of this report:

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Ward Parkway Center Community Improvement District

Introduction

Background

The Ward Parkway Center Community Improvement District (CID) is located in the City of Kansas City. The CID was organized in May 2011 by an ordinance passed by the City Council. Pursuant to the petition filed requesting formation of the district, the members of the Board of Directors of the district are selected by the Mayor and City Council from a listing provided by the Executive Director of the district.

The CID was formed for the purpose of providing funding for the remediation of the blighted condition of the Ward Parkway Center and the construction of public improvements within the district. Phase 1 of the project has been completed and Phase 2 is in progress. The CID has a fiscal year end of April 30 and had an independent audit performed for the year ended April 30, 2017.

Obligations

Bonds with a principal amount of \$9,740,000 were issued in 2011 to fund Phase 1 of the project and the various required reserve accounts, such as the Debt Service Reserve Fund. Additional bonds with a principal amount of \$28,788,000 were issued in 2016 to refund the 2011 bonds and to provide partial funding to construct Phase 2 of the project. The developer also self-financed a portion of the project and a portion of the operating costs. The district issued notes payable to the developer at a rate of 6 percent in 2011, with the rate increasing to 8.5 percent on July 1, 2016. The balance owed to the developer on April 30, 2017, was approximately \$9,200,000, which included accrued interest of approximately \$815,000.

Revenues

In May of 2011, the qualified voters of the CID, in this case the property owner, approved the imposition of a sales tax of up to 1 percent on all taxable transactions within the boundaries of the district for 39 years. The retail establishments within the district are required to collect and remit the sales tax to the Missouri Department of Revenue (DOR). In turn, the DOR distributes the sales tax monies to the bond trustee to be used in accordance with the Trust Indenture.

Major retailers within the district include Trader Joe's, Target, AMC Theaters, Chick-Fil-A, PetSmart, Ross Dress for Less, and TJ Maxx.

Governance

A board acts as the policy-making body for the district's operations and members serve without compensation. Members of the board at April 30, 2017, were:



Ward Parkway Center Community Improvement District Introduction

Name	Term Expires
Jeff Leeper (1) (4)	May 4, 2017 (5)
Lori Cogan (2) (4)	October 7, 2019
Sue Gallatin (3) (4)	May 4, 2017 (5)
Suzanne Brownlee (4)	May 4, 2017 (5)
Adam Watz (4)	October 8, 2019

- (1) Chairman
- (2) Executive Director
- (3) Secretary/Treasurer
- (4) Representative of the property owner
- (5) Serving pursuant to Section 67.1451.4, RSMo, until a successor is appointed. The terms were subsequently extended to expire on May 4, 2021.

Scope and Methodology

The scope of our audit included, but was not necessarily limited to, the year ended April 30, 2017.

We reviewed relevant statutes and CID agreements; including state law¹, the petition to form the CID, the ordinance forming the CID, the intergovernmental agreement between the CID and the city, the district bylaws, the amended and restated construction and financing agreement between the CID and the Developer, the amended and restated CID operating costs funding agreement between the CID and the Developer, and the trust indenture between the bond trustee and the bond issuer. Our review of these state laws and agreements covered the legal responsibilities of the district and the CID Board. In addition, we reviewed the official statements for the bonds issued to fund the project to obtain an understanding of the sources and uses of funds, the terms of the obligations, and the requirements imposed on the district. We also reviewed board meeting minutes to obtain an understanding of actions taken by the board.

We held discussions with a board member, district legal counsel, and the Chief Deputy City Clerk. The purpose of these conversations was to obtain an understanding of the district's operations and decisions made by the district's board, as well as obtaining evidence of compliance with certain requirements. We obtained and reviewed available invoices and canceled checks from the developer to obtain assurance the costs reimbursed to the developer were appropriate.

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 understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violation of applicable contract or other legal provisions could

¹ Sections 67.010, 67.1401 through 67.1571, and 105.145, RSMo; and 15 CSR 40-03.030.



Ward Parkway Center Community Improvement District Introduction

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.

Ward Parkway Center Community Improvement District Management Advisory Report State Auditor's Findings

1. Conflict of Interest

Conflicts of interest were noted in the approval of payments for construction management services, and the Ward Parkway Center Community Improvement District (CID) Board did not utilize a competitive process to select a vendor for such services. The Executive Director of the Board approved over \$1.2 million in construction management payments to companies she was employed by or to companies that share common ownership with her employer. The companies awarded the construction management services contracts have also employed or currently employ all current and past members of the CID Board of Directors. In addition, the companies that have provided the construction management services also work for the developer/owner as the management firm operating the Ward Parkway Center Mall. While these situations may not violate state law, they give the appearance of a conflict of interest.

Proposals were not solicited for construction management services and these three companies received payments totaling \$1,260,334 since the project's inception. Funding for these payments came from bond issuance proceeds or additions to the notes payable issued to the property owner. The debt will be repaid with sales taxes paid by the public.

Considering the companies selected to provide construction management services employ the entire Board, and also work for the developer/owner to operate the center, the lack of a competitive process to select the construction manager for the project gives the appearance of a conflict of interest. While the district may not have violated any state bidding or conflict of interest laws in this situation, best practices dictate the use of a competitive selection process in such a situation. The solicitation of proposals or a competitive selection process would help to alleviate concerns of conflicts, and would provide assurance to the public that tax dollars are being spent wisely and services are provided at a reasonable cost.

Recommendation

The CID Board avoid transactions in the future that create the appearance of a conflict of interest or solicit proposals for services where a conflict may exist.

Auditee's Response

The district's understanding is that the payment of such construction management fees is not a violation of law, and that competitive bidding for construction management services was not required by law under the specific circumstances. In addition, the district believes that the amount of the construction management fees was neither excessive nor unreasonable when considered in the context of a construction project greater than \$27 million, and we note that you have not suggested otherwise. We understand the value and purpose of competitive bidding. The district acknowledges your recommendations and takes them under advisement, although we note that the district's project is substantially complete, no further construction management fees are payable under the current construction management

Ward Parkway Center Community Improvement District Management Advisory Report State Auditor's Findings

contract and it is unlikely that there will be any future construction management contract.

For purposes of clarification: (1) the property owner, not the district, selected and engaged the construction managers and negotiated the construction management fees (though it is acknowledged that the district could have as a matter of policy required the property owner to competitively bid the construction management services); and (2) while there were three companies that provided construction management services over the course of the two phases of the district's project since 2011, only one company was providing services over any given period.

2. Expenditures

The CID Board does not review or approve any project-related expenditures of the district. Total project costs were anticipated to be approximately \$24 million when the district was organized.

The project expenditures are initially paid by the Developer and a requisition is sent to the district for reimbursement. However, the CID Board does not approve any of the requisitions and is not provided with any documentation to support the payment requests submitted by the developer. Payments to the developer are approved only by the CID Executive Director.

It is the responsibility of the Board to provide oversight of district expenditures and to ensure all project costs are proper, reasonable, and an allowable use of district funds.

Recommendation

The CID Board review supporting documentation and approve expenditures of the district to ensure all costs are proper, reasonable, and allowable.

Auditee's Response

We accept the recommendation and will proceed accordingly in the future. In addition, prior to the release of this audit, the Board has reviewed prior expenditures related to Phase 2 of the District's project and ratified such expenditures.

3. Non-Compliance with State Law

The CID Board violated state law by failing to timely submit required reports to the appropriate entities and failing to adopt an annual budget within the required time frame.

3.1 Reporting

The CID Board did not timely submit multiple performance and financial reports as required by state law. Legal counsel for the district indicated the delay in reporting was an oversight. The following table includes recent instances of late reports filed.



Ward Parkway Center Community Improvement District Management Advisory Report - State Auditor's Findings

Fiscal Year	Report	Recipient	Days Late
2016	Performance Report	City Clerk	157
2015	Performance Report	City Clerk	222
2018	Budget	City Clerk	10
2017	Budget	City Clerk	74
2016	Performance Report	DED	155
2015	Performance Report	DED	213
2015	Financial Report	SAO	61

Source: CID personnel, Kansas City Chief Deputy City Clerk, the Department of Economic Development (DED), and the State Auditor's Office (SAO) records.

Section 67.1471.4, RSMo, requires the CID to submit an annual performance report to the municipal clerk and the DED within 120 days after the end of the fiscal year. Section 67.1471.2, RSMo, requires the CID to submit a proposed budget to the governing body of the city between 180 and 90 days prior to the first day of the fiscal year. In addition, Section 105.145, RSMo, requires CIDs to file annual financial statements with the SAO and 15 CSR 40-03.030 requires the annual financial reports to be submitted within six months after the end of the district's fiscal year.

3.2 Budgets

The CID did not adopt annual budgets by the statutory deadline. The fiscal year 2017, 2016, and 2015 budgets were adopted 47, 28, and 58 days, respectively, after that deadline.

Section 67.1471.3, RSMo, requires the board to adopt a budget no later than 30 days prior to the first day of the fiscal year.

Recommendations

The CID Board:

- 3.1 Ensure annual performance reports, budgets, and annual financial reports are filed with the appropriate entities within the time frames established by state law.
- 3.2 Ensure compliance with state law by adopting annual budgets no later than 30 days prior to the beginning of the fiscal year.

Auditee's Response

We regret the noted late filings. We accept the recommendations and have established more effective protocols to assure timely compliance in the future.

Ward Parkway Center Community Improvement District Statement of Changes in Fiduciary Net Position Fiscal Year Ended April 30, 2017

REVENUES	
Bond proceeds	\$ 8,907,974
Sales tax revenues	1,441,053
Use tax revenues	15,191
Other revenues	<u>2</u>
Total Revenues	<u>10,364,220</u>
EXPENDITURES	
Improvements	7,475,631
Operating costs	54,985
Debt service	<u>2,235,079</u>
Total Expenditures	<u>9,765,695</u>
REVENUES OVER (UNDER) EXPENDITURES	
	598,525
Net position, beginning of year	<u>(9,524,832)</u>
Net position, end of year *	<u>\$ (8,926,307)</u>

Source: CPA audited financial statements

* The Net Position (fund balance) is a deficit balance at April 30, 2017, because the costs expended to-date for eligible district project costs are greater than the sales and use tax revenues earned to-date by the district to pay for those eligible project costs. The balance effectively represents the funds advanced by the developer for eligible district project costs and operating costs. Reimbursement to the developer is subordinate to the outstanding bonds and will be paid as sales/use tax revenues are earned and available for payment in accordance with the district's finance-related agreements.