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Auditor Edelen Releases Examination into Bowling Green TIF Project, Finding a Lack of Oversight, Misspending of TIF Revenues

FRANKFORT, Ky. (December 29, 2015) – Auditor Adam Edelen on Tuesday released a special examination into an economic development project in downtown Bowling Green, untangling a complex public-private deal that is facing a $4.5 million deficit.

The Auditor's office initiated the examination into the project's financial activities in June at the request of the City of Bowling Green and Warren County Fiscal Court.

"I hope this report provides clarity and assists in resolving the issues associated with what is otherwise one of the best examples of downtown revitalization in the Commonwealth," Auditor Edelen said.

The City of Bowling Green created the TIF District to spur activity in its urban core. TIF is a tool that allows local governments to dedicate future increases in tax revenue that would be generated by a new development toward public improvements in that area.

In this instance, TIF revenue from the area was used for debt service payments on bonds issued by the county and backed by the city. The bond money, totaling $25.5 million, was to be used to construct a commercial wrap around a parking garage. The sub-developer of the wrap would own the space when the bonds were paid off.

The project collapsed this year after restaurants in the wrap went under and contractors alleged they hadn't been paid. Efforts are underway to revive the project with new bonds and a new project manager.

Auditors found that the project was plagued by poor oversight and numerous, confusing agreements, leading to numerous weaknesses and significant risks of waste and abuse. The Fiscal Court and City did not provide sufficient oversight of the Authority that the Fiscal Court created to oversee the TIF District. The Authority, in turn, delegated many of its oversight responsibilities to the master developer and/or sub-developer, and did not provide sufficient oversight of those delegated functions.

The project involved numerous legal agreements signed by multiple entities, resulting in confusion, disputes and no single entity having clear responsibility for ensuring the success of the project. Some of the agreements were executed after work had begun, contained contradictions and/or included requirements for entities that were not party to the agreement. In addition, multiple drafts of agreements were circulated, with entities not required to sign them suggesting changes and key oversight provisions getting removed.

“Oversight was the hot potato here, getting passed from one entity to the next,” Auditor Edelen said. “I’ve said it time and again – government can outsource the function, but it cannot outsource the oversight.”

A result of the oversight weaknesses include allegations among the various stakeholders regarding the misuse and overspending of bond funds.

Auditors found that the sub-developer failed to balance the project fund, resulting in overspending the project budget and leaving the project with a deficit balance of more than $4.5 million.

More than $1 million in revenues collected from TIF and rental payments that should have been restricted for debt service were deposited into the project fund. This skewed the project fund cash balance. In addition, auditors found a failure to monitor and limit amounts spent on tenant improvements. This also contributed to overspending on the project.

Auditors found that there appeared to be numerous conflicts of interest due to business transactions among related parties on the project. During the examination, it became apparent that some of the complexity and confusion surrounding the project was due to various related-party transactions among entities providing services for the project. A related-party transaction is a business deal or arrangement between two parties that are joined by a special relationship prior to the deal.

In the case of the project, the special relationship was that many business entities providing benefits to or receiving benefits from the project shared common principals. Not only do related party transactions between key individuals and businesses impair transparency and create confusion since several of the businesses are the same principals working in different capacities, but it also raises the risk that the project could be managed in a way to further the best interests of the related parties rather than those of the project and/or public, whether inadvertently or intentionally.

Auditors found that one individual was involved in several different – possibly conflicting – consulting roles related to the project. Due to his involvement in a company contracted to assist in fulfilling the master developer duties, it appears that the individual was able to influence the decision to utilize his other consulting company for restaurant development. In addition, the individual was also the owner/operator of a restaurant that was to be a subtenant in the project space. Documents suggest the individual may have earned as much as $2.07 million dollars from the project through two businesses.

"Almost everyone acknowledges mistakes have been made, and there are a lot of folks working hard to make sure this project can still succeed and that taxpayers don't get stuck holding the bag," Auditor Edelen said. "I hope this report provides a roadmap for achieving that."

The full report can be found on the Auditor's website.

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