
January 18, 2023

Performance Audit
Recommendations and
Corrective Actions for Audit:
19-01

TAX INCREMENT
FINANCING DISTRICT –
CITY OF ST. ALBANS

Unauthorized Use of TIF District
Debt and Understatement of Tax
Increment; St. Albans Owes TIF
District and State Education Fund

Dated: May 24, 2019

Overview

The State Auditor's Office (SAO) makes recommendations designed to improve the operations of state government. For our work to produce benefits, auditees or the General Assembly must implement these recommendations, although we cannot require them to do so. Nevertheless, a measure of the quality and persuasiveness of our performance audits is the extent to which these recommendations are accepted and acted upon. The greater the number of recommendations that are implemented, the more benefit will be derived from our audit work.

In 2010, the SAO began to follow-up on the recommendations issued in our performance audits. Experience has shown that it takes time for some recommendations to be implemented. For this reason, we perform our follow-up activities one and three years after the calendar year in which the audit report is issued. Our annual performance reports summarize whether we are meeting our recommendation implementation targets.

<http://auditor.vermont.gov/about-us/strategic-plans-and-performance-reports>

This report addresses the requirements of Act 155 (2012) to post the results of our recommendation follow-up work on our website. The report does not include follow-up on recommendations issued as part of the state's financial statement audit and the federally mandated Single Audit, which are performed by a contractor. However, our current contract for this work requires the contractor to provide the results of its recommendation follow-up.

| Rec # | Recommendation | Follow-Up Date | Status | Review Comments |
|-------|---|--|-----------------------|---|
| 1 | Seek Vermont Economic Progress Council (VEPC or the Council) guidance about whether the costs associated with the private hotel development are eligible improvement costs or related costs that may be financed with TIF district debt. | 2020 | Implemented | The City consulted with VEPC and the Council approved St. Albans' request to validate the City's use of TIF funds for the hotel redevelopment and required no further action by the City. |
| | | No further follow-up is required because the recommendation was implemented. | | |
| 2 | If VEPC determines that the types of costs that the City paid on behalf of the private hotel development are eligible improvement costs or related costs, the City should consult with VEPC and city legal counsel to determine, what, if any, remedial action is required to address that TIF district debt was used for costs that were not part of an infrastructure improvement approved by VEPC and were not adequately disclosed to city voters | 2020 | Implemented | The City consulted with VEPC and the Council approved St. Albans' request to validate the City's use of TIF funds for the hotel redevelopment and required no further action by the City. |
| | | No further follow-up is required because the recommendation was implemented. | | |
| 3 | If VEPC determines that the types of costs associated with the private hotel development are not eligible improvement costs or related costs, the City should repay the TIF Capital Projects Fund to remedy the ineligible use of TIF district debt proceeds. | 2020 | No Longer Applicable | No corrective action required as VEPC validated the City's use of TIF district debt for costs associated with the private hotel development. |
| | | No further follow-up is required because the recommendation is no longer applicable. | | |
| 4 | Monitor actual costs according to the improvements and related costs approved by VEPC and compare actual costs to the amounts approved by VEPC. | 2020 | Partially Implemented | As part of its January 2019 substantial change request, the City provided VEPC with a list of improvement projects completed or underway which showed the total actual costs to date for improvements and related costs. However, the City has not provided evidence of documented on-going comparison of actual costs for improvements to the totals authorized by VEPC for each improvement and related costs. |
| | | 2022 | Implemented | In September 2022, the City documented and implemented procedures for various aspects of managing the TIF district, including periodic monitoring of improvement and related costs. |
| 5 | Implement a process to reconcile the TIF improvement costs and related costs per the City's records to the costs reported in the Annual Report to VEPC. | 2020 | Not Implemented | The City's Director of Administration indicated that a comprehensive team review is part of the prep work for the annual report and explained that a detail transaction report from the New England Municipal Resource Center (NEMRC) system is used to prepare the VEPC Annual Report. He believes that a documented reconciliation isn't necessary as the NEMRC transaction report contains all needed information. SAO disagrees. While this process may function for existing staff, in the event current staff leave the City's employment, knowledge regarding the reason for differences between the City's accounting records and the annual report filed with VEPC may be lost. New staff won't have the benefit of a documented reconciliation that details and explains differences. |
| | | 2022 | Implemented | The documented TIF procedures specify that each TIF capital project be accounted for in a separate fund in the general ledger and require that the VEPC annual reports match the records in the City's general ledger records. |

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| 6 | Repay the TIF Capital Projects Fund approximately \$1 million for the debt proceeds used for TIF district debt service. | 2020 | Not Implemented | Subsequent to the SAO audit, on July 25, 2019, VEPC retroactively authorized the City's use of debt proceeds to pay debt service and resolved that the City's TIF Fund did not need to be repaid. On August 1, 2019, the Legislative Joint Fiscal Committee advised the VEPC Executive Director that it was important for the Legislature to consider major changes to the program before municipalities can begin using TIF bond proceeds to service debt. The matter was under consideration during the 2020 legislative session, but not resolved. This issue remains open as of the date of recommendation follow-up. |
| | | 2022 | Not Implemented | Although VEPC retroactively authorized the City's use of debt proceeds to pay debt service and resolved that the City's TIF Fund did not need to be repaid, the matter was still under consideration during the 2022 legislative session and was not resolved. The issue remains open as of the date of recommendation follow-up. |
| 7 | Establish a documented procedure that addresses accurate interpretation of the New England Municipal Resource Center (NEMRC) TIF Proceeds report and compliance with the tax increment calculation requirements of TIF Rule 904. | 2020 | Not Implemented | The City disagreed with the need for a documented procedure and believes it was a minor error subsequently corrected in the next fiscal year. We disagree as the City does not have a documented policy or procedure that addresses interpretation of the NEMRC report used to determine tax increment or compliance with the tax increment calculation requirements of TIF Rule 904. |
| | | 2022 | Implemented | In September 2022, the City implemented procedures for various aspects of managing the TIF district. The procedures include determining and accounting for tax increment and how to use the TIF Proceeds report. |
| 8 | Conduct an appraisal of the City-owned parking garage using one of the methodologies described in the Vermont Department of Taxes' (VDT) Lister and Assessor Handbook and treat the property as taxable. | 2020 | Implemented | The City used a real estate consulting firm to conduct an appraisal of the parking garage. The firm concluded that the garage was of nominal value and the City has treated this as equivalent to no taxable value. |
| | | No further follow-up is required because the recommendation was implemented. | | |
| 9 | Consult with VDT's Property Valuation and Review (PVR) division to determine the impact of excluding the parking garage from the calculation of tax increment from FY2016 to FY2018; pay 25 percent of the education tax increment generated by the garage to the State Education Fund and 75 percent of the education and municipal tax increment to the City's TIF Debt Service Fund. | 2020 | No Longer Applicable | The City obtained an appraisal of the parking garage valuation which indicated there was nominal value and concluded this means the garage has no taxable value. Thus, consultation with VDT's VPR division is no longer applicable. |
| | | No further follow-up is required because the recommendation is no longer applicable. | | |

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| VEPC-1 | VEPC (Vermont Economic Progress Council) - Amend the TIF Rules to address whether costs, such as brokerage or other professional service fees, incurred by municipalities in connection with private development projects are related costs eligible to be financed with TIF district debt. | 2020 | Not Implemented | Per the Executive Director, the recommendation does not need to be implemented since VEPC determined that a brokerage fee paid to a real estate firm by St. Albans for the sale of property to a private developer fits within the definition of a related cost. While VEPC's decision addresses St. Albans' situation, it does not address our recommendation which was to clarify in the Adopted TIF Rule whether professional services costs associated with private development in a TIF district, such as a real estate brokerage fee, are related costs that may be financed with TIF district debt. Statute and the Adopted TIF Rule are silent about whether professional service fees associated with private development projects are considered related costs. TIF Rule 705 provides some examples of related costs but does not provide an example of costs paid by municipalities in connection with private development projects that would qualify as a related cost. |
| | | 2022 | Not Implemented | VEPC has developed a 2022 working draft of proposed revisions to the Adopted TIF Rule. The draft proposes some updates to guidance for related costs but does not specifically address whether the cost of professional services incurred by municipalities in connection with private development projects, such as real estate brokerage fees, are related costs. |
| VEPC-2 | Amend the TIF Rules to address whether site preparation or other costs paid by municipalities on behalf of a private development project are improvements eligible to be financed with TIF district debt. | 2020 | Not Implemented | Per the Executive Director, the recommendation does not need to be implemented as site preparation is included in the Adopted TIF Rule as allowable costs under TIF Rule 704 and VEPC determined that the work done on the Core Brownfield site of the hotel development in St. Albans is eligible to be financed with TIF funds. As we noted in our audit report, statute and the Adopted TIF Rule do not address whether paying for site preparation and other costs on behalf of a private development project are improvement costs eligible to be financed with TIF district debt. Further, VEPC's decision regarding St. Albans' Core Brownfield development does not address our recommendation which was to clarify in the Adopted TIF Rule whether site preparation or other costs paid by municipalities on behalf of a private development project are improvements eligible to be financed with TIF district debt. |
| | | 2022 | Partially Implemented | The 2022 working draft of the proposed revisions to the Adopted TIF Rule specifies that the cost of site preparation in connection with environmental remediation of a brownfield is limited to costs identified in documentation issued or approved by the Vermont Agency of Natural Resources. However, site preparation is also listed separately as an eligible improvement so it remains unclear if other site preparation costs paid by municipalities on behalf of a private development project are eligible improvements. |
| VEPC-3 | Define direct infrastructure in the VEPC FAQ document. | 2020 | Partially Implemented | The Executive Director indicated that VEPC would first look to define direct infrastructure in a revision of the Adopted TIF Rule. In its 9/29/2020 draft revision of the Adopted TIF Rule, VEPC clarified that the cost of the installation, new construction, or reconstruction of private capital assets a developer would reasonably incur to complete a private project is not eligible to be financed or paid for with TIF Funds as an improvement or related cost. |
| | | 2022 | Not Implemented | The 2020 working draft of the proposed TIF Rule revision addressed this issue, but the 2022 working draft no longer includes the clarification. |

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| VEPC-4 | Amend the TIF Rules to include examples of changes to improvements or indicators, such as percent of excess spending above the estimated cost for an approved improvement, that require submission of a request for substantial change. | 2020 | Partially Implemented | VEPC's 9/29/2020 draft revision to the Adopted TIF Rule includes seven changes that require VEPC review and approval, including an increase in the TIF financed cost of a project of 20 percent and adding, removing, or substituting a public infrastructure project in the TIF District Plan. |
| | | 2022 | Partially Implemented | The 2022 working draft of the proposed TIF Rule contains the same seven changes that require VEPC review and approval. |