



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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Chris Erickson, Mayor
City of Auburn
1101 J Street
Auburn, NE 68305

Michael Weiss, Chairman
Nemaha County Board of Commissioners
1824 N Street Ste 201
Auburn, NE 68305

Crystal Dunekacke, City Administrator/Economic Developer
City of Auburn Community Redevelopment Authority
1101 J Street
Auburn, NE 68305

Dear Sirs and Madam:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding certain Tax Increment Financing (TIF) projects in the City of Auburn (City), Nebraska, that are overseen by the City's Community Redevelopment Authority (CRA). As a result, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA obtained financial records and other relevant documentation from the City. Based on the outcome of this preliminary planning work, including an analysis of the information obtained, the APA has determined that a separate financial audit or attestation is unnecessary at this time.

Nevertheless, during the course of the preliminary planning work, the APA noted certain issues that merit corrective action.

Background Information

Tax increment financing (TIF) is a popular funding tool used by local governments throughout the United States to promote economic development and redevelopment. In Nebraska, TIF works by allowing a municipality to create a redevelopment authority for the purpose of helping to rehabilitate an area that has been designated as "substandard and blighted" by the local governing body. Public funds may be expended on that redevelopment project and are repaid by dividing the property tax on the formerly blighted area. The "base" tax, which is determined by the value of the property immediately prior to the redevelopment work, continues to be paid to the governing body. Meanwhile, the "excess" tax paid on any subsequent increase in property value resulting from the redevelopment work is paid into a separate fund for the sole purpose of relieving the debt incurred by the redevelopment project. When that debt is paid in full or after an established statutory period of time (at least 15 years but not more than 20 years), whichever comes first, the entire property tax on the redeveloped land is paid once more to the governing body. TIF is made available to Nebraska municipalities through the Community Development Law, which is set out at Neb. Rev. Stat. §§ 18-2101 through 18-2157 (Reissue 2022, Supp. 2023), and certain supplemental statutes.

It is important to note that TIF is not a tax reduction. The overall property tax paid on an improved area remains the same whether the renovation is financed privately or through TIF pursuant to an approved development project. TIF merely redistributes temporarily that portion of the increased property tax valuation generated by any improvements financed with public funds.

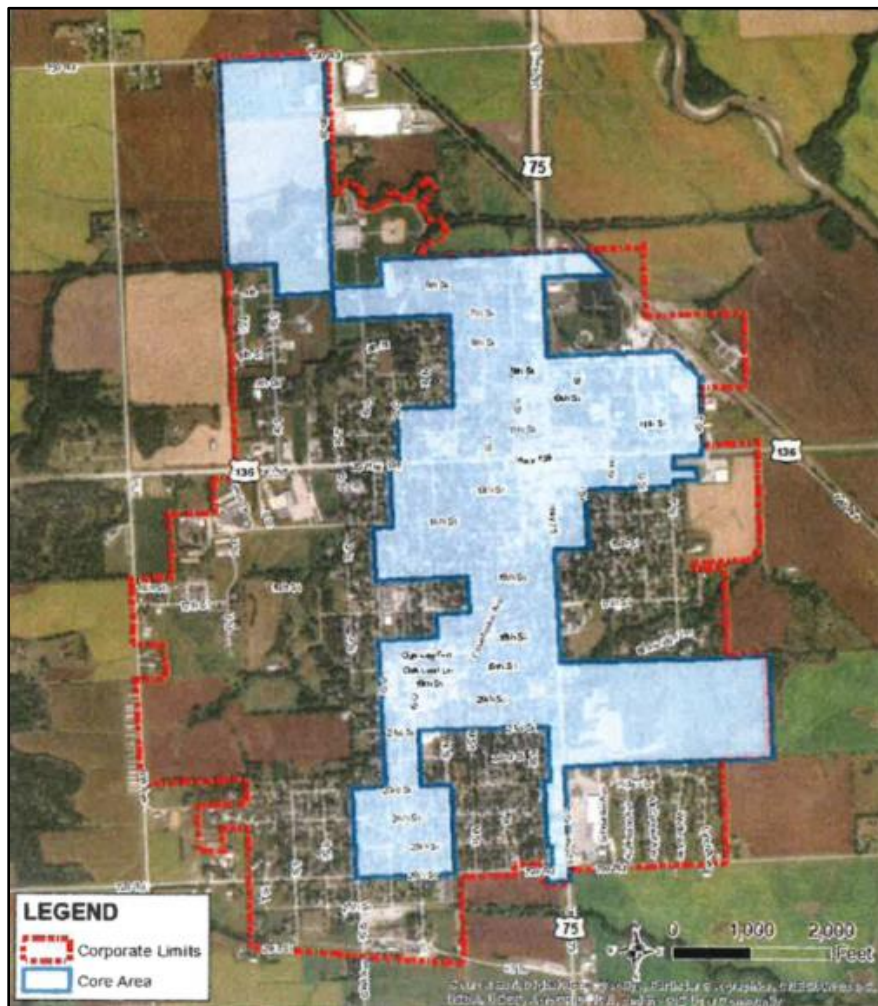
According to the City of Auburn’s (City) website (<https://auburn.ne.gov/cra/>), the City established the Community Redevelopment Authority (CRA) in 2002 “to study and designate certain areas of the city in need of improvement and development for the maximum benefit to the city’s taxpayers.” In addition to standalone TIF projects, the CRA offers reimbursements for certain redevelopment projects using revocable grants. These grants are funded via the excess ad valorem taxes within the redevelopment area.

The following comment and recommendation, which has been discussed with the appropriate members of the City, the CRA, and the County, and their management, is intended to improve internal control or result in other operating efficiencies.

Comment and Recommendation

Auburn Core Redevelopment Plan Issues

On July 8, 2019, the City Council approved the Auburn Core Redevelopment Plan (Plan) through the adoption of Resolution No. 17-19. The Plan seeks to “prevent and eliminate blighted and substandard conditions in the Redevelopment Area that are detrimental to the social and economic well-being of the neighborhoods in which they exist.” Through the approval of the Plan, the City has created a rather large redevelopment area, as shown in the illustration below:



As shown by the legend on the bottom-left corner of the above image, the redevelopment area of the Plan is shaded in blue and covers a significant portion of the City’s municipal boundaries, which are outlined in red. Redevelopment plans that establish a redevelopment area that cover much of a municipality’s boundaries, such as this Plan, are typically referred to as “bucket TIF” plans – a term not found, it should be noted, in either Nebraska statutes or the opinions of the Nebraska Attorney General or this State’s appellate courts.

A redeveloper seeking the use of TIF for a development project can apply to the City as long as the project falls within the shaded blue area shown in the image above. As mentioned previously in the “Background Information” section herein, the CRA provides for reimbursements made for certain development projects through the use of revocable grants, which are funded through excess ad valorem taxes generated within the Plan’s redevelopment area.

As will be explained in further detail below, however, the APA questions the use of the ad valorem taxes by the City and the CRA for these revocable grants and the payment of other miscellaneous expenses. The APA inquired with the City to determine if the City had taken on any debt related to any of the TIF projects, the City stated it had not taken on any debt related to such projects. Instead of being used to pay off debt incurred in relation to any development projects within the Plan’s redevelopment area, the taxes were instead used to reimburse developers for certain costs that they had incurred on TIF projects. Therefore, the City is merely just collecting and holding TIF funds that are then used towards the revocable grant disbursements made related to development projects, which is not an allowable use of ad valorem taxes according to the Community Development Law and the Department of Revenue’s rules and regulations.

The APA obtained a copy of the Plan’s “TIF Activity Report” for the period January 1, 2020, through December 31, 2023, to identify how the ad valorem taxes generated from its redevelopment area were being used. Displayed in the table below is a summary of the Plan’s TIF activity by year:

Year	Receipts	Disbursements	Balance
2020	\$ 679,908.15	\$ (3,831.42)	\$ 676,076.73
2021	\$ 226,409.03	\$ (129,158.03)	\$ 773,327.73
2022	\$ 269,111.56	\$ (149,956.69)	\$ 892,482.60
2023	\$ 221,151.18	\$ (11,740.18)	\$ 1,101,893.60
Totals	\$ 1,396,579.92	\$ (294,686.32)	

A detailed listing of the activity in the Plan’s “TIF Activity Report” has been included herein as **Exhibit A**.

It is important to note that \$658,003.50 of the total receipt amount for 2020, as shown above, is actually the result of the CRA having transferred the balances of two other TIF projects – Auburn Project No. 1 (Project No. 1) and Auburn Project No. 2 SE (Project No. 2 SE) – in August 2020 into the Plan’s account. After this transfer, both Project No. 1 and Project No. 2 SE continued to have receipts and disbursements for 2020, 2021, and 2022; however, all money was held and tracked under the Plan. In fact, Project No. 2 SE was still collecting ad valorem taxes until March 2022. Again, those monies were lumped in with the Plan’s funds.

Project No. 1 and Project No. 2 SE were “bucket TIF” plans created prior to the Plan. Project No. 1 was established in 2003 for the enhancement of the 1880’s commercial district. In December 2018, the City notified the Nemaha County (County) Assessor that the project would cease at the end of 2018, but the ad valorem taxes were still collected until December 2020. Based on the documentation on the City’s TIF activity reports and the County’s records, the City does not appear to have returned the extra ad valorem taxes collected after the project was concluded in 2018.

Project No. 2 SE was started in 2010 and was meant to prepare the southeast area of the City for redevelopment. According to a letter that the City sent to the County Treasurer in March 2022, this project was terminated in 2019, after its indebtedness was paid in full; however, the City failed to inform the County of the project’s termination at that time. Instead, the City continued to collect ad valorem taxes until March 2022. When notifying the County Treasurer of the retroactive termination, the City provided a \$74,434.92 check for the ad valorem taxes collected during 2019, 2020, and 2021. The City does not appear, however, to have returned the \$8,498.13 collected in 2022 or remitted additional monies received prior to 2022 for earlier tax years.

As Project No. 1 and Project No. 2 SE were terminated in 2018 and 2019, respectively, the excess ad valorem taxes and interest collected should have been returned to the County Treasurer. Nevertheless, as noted above, both projects had significant balances in August 2020 – and, instead of remitting those funds to the County Treasurer, the City joined the balances with the Plan’s funds and began tracking all activity under the Plan’s account.

For the Plan specifically, one of the projects for which a reimbursement was made – the Auburn Central Apartments Project (Project) – was designated by the CRA in or around August and September 2021. According to news articles published at that time, the City Council had originally planned to use \$600,000 in American Rescue Plan Act (ARPA) funds to purchase 35 acres of land to create 29 residential and 5 multi-family lots. Because the property had been deemed blighted and substandard, though, the purchase agreement was transferred instead to the CRA.

The following excerpt shows the “Projected Sources and Uses” of TIF for this Project:

Exhibit "D"	
Projected Sources and Uses	
<u>Sources:</u>	
Equity:	\$100,000.00 *
Bank Loan:	\$645,000.00 *
Tax Increment Financing:	\$ 50,000.00
Other (itemize):	\$0.00
<u>Eligible Costs/Projected TIF Uses*</u>	
Land Acquisition (if applicable):	\$ 12,000.00
Site Development (itemize):	\$ 15,000.00
Building Cost:	\$768,000.00
Architectural & Engineering Fees:	\$ _____
Legal Fees:	\$ _____
Financing Costs:	\$ _____
Broker Costs:	\$ _____
Contingencies:	\$ _____
Other (itemize):	\$ _____
TOTAL \$795,000.00	
* The above figures are only estimates of the Eligible Costs and other costs, and such actual costs will be reflected in the Eligible Costs Certifications required under Section 2 of the Plan Amendment and Redevelopment Agreement.	

Included in the Plan’s “TIF Activity Report” was a \$50,000 disbursement to the Auburn Central Apartments, LLC, on September 22, 2021, which appears to be the same amount listed as “Tax Increment Financing” under the “Sources” section in the above image.

The following table details this disbursement:

Date	Description	Amount
9/22/2021	Central Apartments	\$ (50,000.00)

According to supporting documentation provided by the City, this \$50,000 payment was apparently a reimbursement to Auburn Central Apartments, LLC, for material, including windows, gutters, roofing, and labor costs, totaling \$56,671, which the company incurred in relation to the development work being performed for the Project.

The following are images of both the invoice and the check issued by Auburn Central Apartments, LLC, for one such payment the company made that was covered by the reimbursement payment from the City:

DARNELL GLASS CO.
308 Elm Street
STELLA, NEBRASKA 68442
(402) 883-2190

CUSTOMER'S ORDER NO. _____ PHONE _____ DATE 8-6-21

NAME Swan Development LLC.

ADDRESS 3515 Hawthorne Ave

Omaha NE 68131-1330

SOLD BY _____ CASH _____ C.O.D. _____ CHANGE _____ CR. ACCT. _____ MOSE. RETO. _____ PAID OUT _____

CITY.	DESCRIPTION	PRICE	AMOUNT
	86 Alside Mezzo series DH windows H&S series Low E Argon /wh/whi		35,000 ⁰⁰
	(Ref: 1107 Central Ave Auburn NE 68305 Apartments)		
	Labor		9,180 ⁰⁰
		TAX	1,820 ⁰⁰
		TOTAL	39,000 ⁰⁰

RECEIVED BY _____

1300 All claims and retained profit MUST be accompanied by this bill. THANK YOU

Auburn Central Apartments LLC
PO Box 633
Omaha, NE 68101-0633

LOOK FOR:
20 hologram foil across top
Hologram code in upper right corner

3002
76-1011/041

Date 8/9/21 CHECKSAFE

Pay to the Order of Darnell Glass Co. \$ 39,000

Thirty Nine Thousand and 00/100 Dollars

Dundee Bank
Omaha, NE
Member FDIC
76-1011/041

For 1107 Central Ave - Windows [Signature]

3002

It is important to note that, according to the "Projected Sources and Uses" of the Project, as mentioned previously (page 4 herein), the company took out a bank loan in the amount of \$645,000. Rather than using the excess ad valorem taxes to repay the debt, however, the City chose instead to reimburse the company for material and labor costs incurred already in relation to the Project.

Additionally, disbursements were made for Project No. 1 and Project No. 2 SE, including for legal fees and other miscellaneous expenses, out of the excess ad valorem taxes collected for these projects, which is not an allowable use of these funds. Disbursements were still being made out of these excess tax revenues up to three years after the projects were concluded.

Neb. Rev. Stat. § 18-2147(1)(b) (Supp. 2023) of the Community Development Law states the following:

That portion of the ad valorem tax on real property, as provided in the redevelopment contract, bond resolution, or redevelopment plan, as applicable, in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority for financing or refinancing, in whole or in part, the redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the county assessor and county treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project shall be paid into the funds of the respective public bodies. An authority may use a single fund for purposes of this subdivision for all redevelopment projects or may use a separate fund for each redevelopment project[.]

(Emphasis added.) The above statutory language explicitly requires the excess ad valorem taxes to “be used solely” for the payment of principal and interest in connection with money advanced or indebtedness incurred. As mentioned previously, the City stated it had not taken on any debt related to any of the TIF projects. Therefore, the TIF funds collected and held by the City are then used towards the revocable grant disbursements made related to development projects, rather than towards the payment of debt.

Furthermore, in Title 350 NAC 18-003.03C(2) (March 15, 2009) – which, having been properly “adopted and filed” has “the effect of statutory law,” per *E.M. v. Neb. HHS*, 306 Neb. 1, 17-18, 944 N.W.2d 252, 265 (2020) – the Department of Revenue has clarified that TIF funds are “to be used for the sole purpose of paying the indebtedness incurred for the project for which the taxes were pledged.” After all such specific financial obligations have been fully satisfied, § 18-2147(1)(b), as quoted above, directs the county assessor and the county treasurer to be notified and the ad valorem taxes to be “paid into the funds of the respective public bodies.”

In addition, as noted at the outset of this letter (page 2 herein), the term “bucket TIF” is not found in either Nebraska statutes or the opinions of the Nebraska Attorney General or this State’s appellate courts. As mentioned previously, the Community Development Law and the Department of Revenue’s rules and regulations require TIF funds to be used only for the payment of “indebtedness incurred for the project for which taxes were pledged.” Therefore, the APA questions the use of ad valorem taxes by the City and the CRA for revocable grants that do not pay off debt but rather reimburse developers for certain costs that they have incurred on TIF projects. Furthermore, the APA also questions the payment of miscellaneous expenses, such as legal fees, with these funds.

In fact, given the unequivocal language in both § 18-2147(1)(b) and Title 350 NAC 18-003.03C(2), the APA believes that the City should not only reimburse the County for these dubious reimbursement payments but also return the excess ad valorem taxes for proper redistribution, per express statutory directive.

Good internal controls require procedures to ensure the excess ad valorem taxes set aside under the Community Development Law are utilized properly by the City and the CRA. Per Title 350 NAC 18-003.03C(2), such revenues must be used “for the sole purpose of paying the indebtedness incurred for the project for which the taxes were pledged.” Per § 18-2147(1)(b), moreover, any remaining ad valorem taxes not needed to satisfy outstanding indebtedness incurred for a specific redevelopment project should be “paid into the funds of the respective public bodies.”

Without such procedures, there is an increased risk for both loss or misuse of TIF funds and statutory noncompliance.

We recommend the implementation of procedures to ensure excess ad valorem taxes set aside under the Community Development Law are utilized properly by the City and the CRA, being handled in strict accordance with the requirements of both Title 350 NAC 18-003.03C(2) and § 18-2147(1)(b).

Nemaha County Response:

It appears this audit covers a time period of January 2020 through December 2023. The County has additional concerns in regards to the TIF activity prior to this timeframe and will be seeking further investigation on the use and management of these funds. At the end of February 2024, the County has distributed the following amounts for each of the following TIF projects:

<i>TIF Auburn Project No. 1</i>	<i>64-0802</i>	<i>\$1,748,587.16</i>
<i>TIF Terrace Heights Village LP</i>	<i>64-0801</i>	<i>\$285,806.93</i>
<i>TIF Auburn Bowling Alley</i>	<i>64-0803</i>	<i>\$85,565.91</i>
<i>TIF Hemingsen Funeral Home</i>	<i>64-0804</i>	<i>\$165,136.88</i>
<i>TIF NW Auburn Sanitary Proj</i>	<i>64-0805</i>	<i>\$129,758.99</i>
<i>TIF Terrace Heights II, LLC</i>	<i>64-0806</i>	<i>\$247,688.67</i>
<i>TIF Auburn Proj 2 SE</i>	<i>64-0807</i>	<i>\$198,701.43</i>
<i>TIF Auburn West Project 1</i>	<i>64-0809</i>	<i>\$318,369.74</i>
<i>TIF Orscheln Proj</i>	<i>64-0808</i>	<i>\$243,105.31</i>
<i>TIF Auburn Core Area Proj</i>	<i>64-0810</i>	<i>\$650,237.02</i>
<i>TIF The 1918 J St Redevelopment</i>	<i>64-0811</i>	<i>\$0</i>
	<i>TOTAL</i>	<i>\$4,072,958.04</i>

Further clarification is needed in regards to the City of Auburn CRA returning ad valorem taxes for redistribution to the correct political subdivisions. The audit covers the need for ad valorem taxes that were erroneously collected and spent to be returned for redistribution to the correct political subdivisions, but there is not clarification on if the interest earned on the money should also be returned. The City of Auburn CRA in the past has returned interest in an inconsistent manner, so any clarification would be greatly appreciated.

We appreciate your efforts on this matter. The County understands what a serious situation this has become. The County is hopeful that the City of Auburn CRA will rectify their actions in a timely fashion as collections are still occurring.

City of Auburn Community Redevelopment Authority Response:

This firm [Baird Holm LLP] acts as legal counsel to the Community Redevelopment Authority of Auburn, Nebraska (the "CRA"). We are in receipt of the Nebraska Auditor of Public Accounts' ("APA") undated draft letter in response to an inquiry pertaining to the CRA. We appreciate the opportunity to respond to the same. While it is our position the CRA has acted in accordance with Nebraska law, the CRA intends to undertake certain actions to address the matters set forth in the draft letter. The CRA's proposed action plan, as well as its responses to select matters and statements set forth in the draft letter, are provided below. Unless otherwise stated, all statutory references herein are to the Nebraska Community Development Law, Sections 18-2101 et seq., of the Nebraska Revised Statutes (referred to herein as the "Act").

Auburn 1:

The proper and ongoing use of the Auburn 1 funds (i.e., reimbursements of advances for projects within the original Auburn 1 area for permissible uses/sub-phases under the original Auburn 1 plan) is not prohibited by law. The expiration of the 15-year division period for a project does not dictate the expiration or completion of such project. Accordingly, the mere fact that funds remain at the end of the 15-year division period does not mean those funds cannot be utilized in furtherance of an ongoing project (such as Auburn 1). However, we recognize TIF funds should not be held in perpetuity, and acknowledge the APA's concerns regarding the same. Therefore, in accordance with the CRA's self-imposed cutoff date of 15 years that it intends to implement for the Core Area (detailed below), the CRA will retroactively implement and honor the same with respect to Auburn 1. The CRA will voluntarily, and not as an admission of any wrongdoing, remit to the County the balance which existed for Auburn 1 at the conclusion of its 15-year division period.

Auburn 2:

With respect to Auburn 2, the County's ongoing division of those taxes was in error and should not have occurred following notification that the Auburn 1 division period had concluded. Once made aware of the error, the CRA attempted, in good faith and in conjunction with the County, to remedy the same. Both the CRA and County believed the CRA's remittance of \$74,424.92 remedied this error. However, given the alleged findings set forth in the draft letter, the CRA will review the matter further; and if it is determined that the CRA remains in possession of Auburn 2 funds, the CRA will remit the same to the County.

Core Area:

The draft letter mischaracterizes both the nature of the Core Area program/project, as well as the administration of the increment generated therefrom – both of which comply with the plain language and intent of the Act. Section 18-2107(13) provides the CRA with express authority to, "plan, undertake, and carry out neighborhood development programs consisting of redevelopment project undertakings and activities in one or more community redevelopment areas which are planned and carried out on the basis of annual increments in accordance with the Community Development Law for planning and carrying out redevelopment projects." The Core Area plan, along with its governing policies and guidelines, is exactly this – and explicitly states as much throughout the documents and resolutions adopted in association therewith.

The draft letter labels the Core Area as a “bucket TIF” plan, and posits that such a term/program is not found within the Act. However, this is because “bucket TIF” is a colloquialism created long after adoption of the Act, with no discernable meaning or material legal value with respect to matters of statutory interpretation and/or compliance. However, to the extent “bucket TIF” is meant to denote a TIF program consisting of redevelopment activities undertaken pursuant to a district-wide project/plan, the costs of which are “carried out on the basis of annual increments” – the Act very explicitly provides for the same, and we do not disagree the Core Area fits squarely within this definition.

The draft letter takes exception with the CRA’s handling/administration of the Core Area funds based upon the fact that the CRA has not, to this point, issued indebtedness in relation to the same. However, the draft letter appears to read-into the statutes its own (narrow) definition of “indebtedness”, and disregards the additional language under section 18-2147(1)(b). Specifically, it does not acknowledge the portion of the provision that expressly permits application of excess ad valorem taxes towards the repayment of advances of money, whether funded, refunded, assumed or otherwise, for financing a redevelopment project. Irrespective of their label (which is of no real legal significance), the above permissible use of increment functions in the same manner as the Core Area’s “revocable grants”.

Even if we accept the narrow interpretation of “indebtedness” set forth in the draft letter, the Act does not prescribe a timeframe for when indebtedness must be issued or incurred, nor does it prohibit the division/collection of increment into a special fund prior to such time. The express limitations under section 18-2147(1)(b), upon which the draft letter primarily focuses, relates only to the application of the funds once taken out of the special fund. The Core Area funds at issue remain in the special fund. Payments out of the special fund have been, and will continue to be, in accordance with the permissible applications under section 18-2147(1)(b). This could be via advances, as described above, or through a subsequent issuance of indebtedness by the CRA, as described in the action items below. Irrespective of the same, the mere accrual of increment in the special fund prior to a permissible application does not violate section 18-2147(1)(b) or any other provision of the Act.

In actuality, the Core Area is a neighborhood development program under section 18-2107(13). Its redevelopment plan, along with its policies and guidelines, implements an overarching and district-wide redevelopment project, which is carried out over time via the undertaking of numerous sub-projects (or sub-phases). The CRA can undertake these activities, or in lieu of the same, may assign portions of the project to private parties (i.e., sub-projects). If assigned, the eligible portions of the sub-projects are undertaken on the CRA’s behalf, and the eligible costs incurred in association therewith are advances of money by private parties to the CRA to finance the project. As such, the revocable grants simply and appropriately act as the CRA’s promise to repay these advances in accordance with 18-2147(1)(b). Repayment is subject to the CRA’s confirmation that the sub-project, as completed, fits within the bounds of the overarching neighborhood development program project and the costs associated with the advances are eligible for reimbursement under the Act (hence, the revocability component).

The draft letter focuses on the form/labeling of the financing instruments and overall project structure, and not their function. While the CRA could have labeled the “revocable grants” as “repayment of advances towards eligible costs of a redevelopment project”, their function would be identical. In fact, a narrow reading of the Act which emphasizes form over function and/or intent violates its express terms. Section 18-2143 provides, “The Community Development Law and all grants of power, authority, rights, or discretion made to a city and to an authority created under the Community Development Law shall be liberally construed, and all incidental powers necessary to carry into effect the Community Development Law are hereby expressly granted to and conferred upon a city or an authority created pursuant thereto.” As such, the CRA’s implementation and of the Core Area, and administration of the increment collected in association therewith, has all been undertaken in compliance with the Act. Notwithstanding, the CRA intends to adopt certain changes to the Core Area program in an effort to address the APA’s concerns moving forward. Such measures will include:

- *Incorporating additional context and terminology to better reflect and frame its intent, and where it fits within the statutory framework. For example: (i) the plan sets forth an overarching, district-wide, redevelopment project, consisting of a number of sub-projects occurring over time; (ii) sub-projects may be assigned and undertaken by private parties, on behalf of the CRA; (iii) the eligible costs of the sub-projects incurred by private parties are incurred on behalf of the CRA, and constitute advances of money*

to the CRA; and (iv) the instruments issued by the CRA in relation to the same are promises to repay such advances per the express authority under Section 18-2147(1)(b).

- Issuing indebtedness to finance portions of the redevelopment project, either through itself or through private developers.
- Self-imposing a 15-year cutoff for the use/application of Core Area funds. I.e., any unused or uncommitted Core Area funds remaining in the project's special fund at the expiration of the 15-year division period, will be remitted back to the County for redistribution to the taxing jurisdictions.

As a final matter, the draft letter takes issue with the CRA's application of Core Area funds towards the payment of legal fees, and labels the same as "dubious". Such characterization is erroneous and unwarranted. Legal fees incurred in relation to a redevelopment project are widely-accepted as eligible expenses under section 18-2103(28)(c) (i.e., "...and may also include the preparation of the redevelopment plan, the planning, survey, and other work incident to a redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project."). The CRA has taken measures to ensure that all legal fees paid from Core Area funds pertained to legal work directly related to the Core Area. The draft letter appears to infer that such payments are not appropriate due to the fact that the initial implementation of the plan/project, and the legal work associated therewith, occurred many years ago. However, the statute does not provide for such limitation, and very clearly contemplates and permits the same in relation to carrying out a redevelopment project. Subsequent to its initial implementation, only those fees related to legal work carried out in furtherance of the Core Area project were reimbursed from Core Area funds. As such, the portion of the draft letter addressing the same is unwarranted and inaccurate, both factually and legally. We respectfully request its removal.

APA Response:

We appreciate the CRA's consideration of, as well as responses to, the comment contained in our letter. Particularly appreciated is the expressed willingness of the CRA to implement certain changes to help resolve the issues raised therein.

The detailed responses offered do much to clarify the CRA's interpretation and application of the Nebraska Community Development Law. In acknowledgement of that beneficial analysis, the APA wishes to reiterate briefly certain crucial concerns regarding the handling of excess ad valorem taxes. To start, as stated by the CRA, the Community Development Law does not appear to prescribe a specific timeframe for the issuance of indebtedness or the expenditure of ad valorem taxes for the satisfaction thereof. Likewise, the CRA's response is correct about the concurrence of the APA and CRA that TIF funds should not be held in perpetuity – something that, absent the "15-year cutoff for the use/application of Core Area funds," as proposed by the CRA, could pose an ongoing dilemma.

The problem of potentially holding TIF funds in perpetuity has been exacerbated by the CRA's practice of holding in reserve previously collected ad valorem taxes to repay the "advances of money" resulting from eligible redevelopment costs for ensuing sub-projects or sub-phases. The CRA would have no way of knowing either the timing or the number of such additional undertakings when the Core Area redevelopment plan was established. Neb. Rev. Stat. § 18-2147(1)(b) (Supp. 2023) requires the CRA, upon the payment of all debt for a given project, to "notify the county assessor and county treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project shall be paid into the funds of the respective public bodies." Theoretically, at least, such uncertainty about the timing and number of future sub-projects could allow the CRA to retain the excess ad valorem taxes indefinitely.

If no active sub-projects are pending payment from the CRA, moreover, ongoing debt cannot be said to exist. Per Title 350 NAC 18-003.03D, the CRA must "immediately" send written notification to the designated County officials when "the indebtedness incurred for the project has been paid." Further, projects capable of being paid out of pocket by redevelopers, would appear ineligible for TIF funding under Neb. Rev. Stat. § 18-2116(1) (Reissue 2022), which requires that, among other things, "the redevelopment project in the plan would not be economically feasible without the use of tax-increment financing."

Ultimately, the APA was concerned with the underlying legality of the CRA's decision to hold for future project costs over \$1,000,000 in excess ad valorem taxes, raised largely from completed projects, instead of remitting those fees to the County for distribution to the appropriate political subdivisions. The implementation of the ameliorative measures proposed by the CRA should prove conducive to resolving that concern.

Lastly, the APA agrees that the Community Development Law does not prohibit the payment of legal fees per se; however, we continue to question the use of excess ad valorem taxes to pay continuing legal fees relating to prior TIF projects that are no longer active.

* * * * *

Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use the knowledge gained during our work to make comments and recommendations that we hope will be useful to the City, the CRA, and the County.

Draft copies of this letter were furnished to the City, the CRA, and the County to provide their management with an opportunity to review and to respond to the comment and recommendation contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time.

This communication is intended solely for the information and use of the City, the CRA, the County, and their management. It is not intended to be, and should not be, used by anyone other than these specified parties. However, this communication is a matter of public record, and its distribution is not limited.

If you have any questions regarding the above information, please contact our office.

Audit Staff Working on this Examination:

Craig Kubicek, CPA, CFE – Deputy Auditor
Mason Culver – Auditor-In-Charge
Destini Morales – Auditor
Kelsey Lutz – Examiner

Sincerely,



Craig Kubicek, CPA, CFE
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Auditor of Public Accounts
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CITY OF AUBURN COMMUNITY REDEVELOPMENT AUTHORITY
Auburn Core Redevelopment Plan TIF Activity Report
 January 2020 through December 2023

EXHIBIT A

Date	Description	Receipt	Disbursement	Balance
1/1/2020	Beginning Balance			\$0.00
1/10/2020	Co. Collections	\$6,024.05	\$0.00	\$6,024.05
1/31/2020	Interest on Account	\$0.87	\$0.00	\$6,024.92
2/29/2020	Interest on Account	\$0.81	\$0.00	\$6,025.73
3/13/2020	Co. Collections	\$258.51	\$0.00	\$6,284.24
3/31/2020	Interest on Account	\$0.65	\$0.00	\$6,284.89
4/10/2020	Co. Collections	\$443.76	\$0.00	\$6,728.65
4/30/2020	Interest on Account	\$0.55	\$0.00	\$6,729.20
5/15/2020	Co. Collections	\$2,031.75	\$0.00	\$8,760.95
5/31/2020	Interest on Account	\$0.58	\$0.00	\$8,761.53
6/12/2020	Co. Collections	\$186.93	\$0.00	\$8,948.46
6/30/2020	Interest on Account	\$0.57	\$0.00	\$8,949.03
7/14/2020	Baird Holm	\$0.00	(\$369.00)	\$8,580.03
7/31/2020	Interest on Account	\$0.58	\$0.00	\$8,580.61
8/11/2020	Area Replace Res 2-20 Note	\$658,003.50	\$0.00	\$666,584.11
8/11/2020	Baird Holm	\$0.00	(\$1,168.50)	\$665,415.61
8/14/2020	Co. Collections	\$72.61	\$0.00	\$665,488.22
8/31/2020	Interest on Account	\$56.42	\$0.00	\$665,544.64
9/11/2020	Co. Collections	\$11,571.76	\$0.00	\$677,116.40
9/16/2020	Baird Holm	\$0.00	(\$340.00)	\$676,776.40
9/30/2020	Interest on Account	\$54.64	\$0.00	\$676,831.04
10/13/2020	Baird Holm	\$0.00	(\$1,074.00)	\$675,757.04
10/13/2020	Auburn Newspapers	\$0.00	(\$72.50)	\$675,684.54
10/16/2020	Co. Collections	\$1,010.26	\$0.00	\$676,694.80
10/31/2020	Interest on Account	\$57.18	\$0.00	\$676,751.98
11/12/2020	Baird Holm	\$0.00	(\$765.00)	\$675,986.98
11/13/2020	Co. Collections	\$18.37	\$0.00	\$676,005.35
11/30/2020	Interest on Account	\$55.41	\$0.00	\$676,060.76
12/11/2020	Check books (chg)	\$0.00	(\$42.42)	\$676,018.34
12/31/2020	Interest on Account	\$58.39	\$0.00	\$676,076.73
1/15/2021	Co. Collections	\$21,163.10	\$0.00	\$697,239.83
1/31/2021	Interest on Account	\$57.80	\$0.00	\$697,297.63
2/10/2021	Baird Holm	\$0.00	(\$270.00)	\$697,027.63
2/12/2021	Co. Collections	\$10,351.87	\$0.00	\$707,379.50
2/28/2021	Interest on Account	\$53.84	\$0.00	\$707,433.34
3/1/2021	Stutheit Internation	\$0.00	(\$3,750.00)	\$703,683.34
3/1/2021	Butterfly Lane	\$0.00	(\$136.76)	\$703,546.58
3/12/2021	Co. Collections	\$17,931.98	\$0.00	\$721,478.56
3/31/2021	Interest on Account	\$60.85	\$0.00	\$721,539.41
4/15/2021	Auburn Disct. Liq.	\$0.00	(\$21,577.12)	\$699,962.29
4/16/2021	Co. Collections	\$14,454.69	\$0.00	\$714,416.98
4/30/2021	Interest on Account	\$58.99	\$0.00	\$714,475.97
5/11/2021	Baird Holm	\$0.00	(\$990.00)	\$713,485.97
5/13/2021	Co. Collections	\$62,747.74	\$0.00	\$776,233.71
5/24/2021	Butterfly Lane	\$0.00	(\$869.80)	\$775,363.91
5/31/2021	Interest on Account	\$63.33	\$0.00	\$775,427.24
6/11/2021	Co. Collections	\$28,386.26	\$0.00	\$803,813.50
6/30/2021	Interest on Account	\$68.52	\$0.00	\$803,882.02
7/16/2021	Co. Collections	\$5,518.96	\$0.00	\$809,400.98
7/31/2021	Interest on Account	\$69.78	\$0.00	\$809,470.76
8/11/2021	Co. Collections	\$5,561.14	\$0.00	\$815,031.90

Note: This amount is the balances of the TIF Auburn Project No. 1 and Auburn Project No. 2 SE accounts at July 31, 2020, being receipted into the Plan's account.

CITY OF AUBURN COMMUNITY REDEVELOPMENT AUTHORITY
Auburn Core Redevelopment Plan TIF Activity Report
 January 2020 through December 2023

EXHIBIT A

Date	Description	Receipt	Disbursement	Balance
8/13/2021	Ruth Heywood	\$0.00	(\$20,604.40)	\$794,427.50
8/31/2021	Interest on Account	\$68.00	\$0.00	\$794,495.50
9/10/2021	Co. Collections	\$39,252.06	\$0.00	\$833,747.56
9/22/2021	Central Apartments	\$0.00	(\$50,000.00)	\$783,747.56
9/30/2021	Interest on Account	\$66.05	\$0.00	\$783,813.61
10/6/2021	Ruth Heywood	\$0.00	(\$4,395.60)	\$779,418.01
10/13/2021	Auburn Newspapers	\$0.00	(\$146.25)	\$779,271.76
10/13/2021	Baird Holm	\$0.00	(\$2,354.50)	\$776,917.26
10/15/2021	Co. Collections	\$17,086.04	\$0.00	\$794,003.30
10/31/2021	Interest on Account	\$66.84	\$0.00	\$794,070.14
11/10/2021	Auburn Newspapers	\$0.00	(\$52.05)	\$794,018.09
11/10/2021	Baird Holm	\$0.00	(\$4,011.55)	\$790,006.54
11/12/2021	Co. Collections	\$1,390.49	\$0.00	\$791,397.03
11/30/2021	Interest on Account	\$65.05	\$0.00	\$791,462.08
12/10/2021	Co. Collections	\$1,798.00	\$0.00	\$793,260.08
12/15/2021	Ruth Heywood	\$0.00	(\$20,000.00)	\$773,260.08
12/31/2021	Interest on Account	\$67.65	\$0.00	\$773,327.73
1/13/2022	Baird Holm	\$0.00	(\$1,104.48)	\$772,223.25
1/14/2022	Co. Collections	\$27,598.56	\$0.00	\$799,821.81
1/31/2022	Interest on Account	\$67.13	\$0.00	\$799,888.94
2/10/2022	Ad Valorem Ret	\$0.00	(\$29,095.22)	\$770,793.72
2/10/2022	Ad Valorem Ret	\$0.00	(\$32,217.66)	\$738,576.06
2/11/2022	Co. Collections	\$12,939.98	\$0.00	\$751,516.04
2/15/2022	Nemaha Co. Clerk	\$0.00	(\$34.00)	\$751,482.04
2/15/2022	Baird Holm	\$0.00	(\$1,512.00)	\$749,970.04
2/28/2022	Interest on Account	\$61.59	\$0.00	\$750,031.63
3/11/2022	Co. Collections	\$18,659.17	\$0.00	\$768,690.80
3/16/2022	Void Ad Valorem	\$29,095.22	\$0.00	\$797,786.02
3/16/2022	Void Ad Valorem	\$32,217.66	\$0.00	\$830,003.68
3/24/2022	Ad Valorem Ret	\$0.00	(\$68,504.36)	\$761,499.32
3/28/2022	Ad Valorem Ret	\$0.00	(\$5,930.56)	\$755,568.76
3/31/2022	Interest on Account	\$69.59	\$0.00	\$755,638.35
4/15/2022	Co. Collections	\$16,764.53	\$0.00	\$772,402.88
4/30/2022	Interest on Account	\$63.29	\$0.00	\$772,466.17
5/13/2022	Co. Collections	\$51,952.40	\$0.00	\$824,418.57
5/17/2022	Baird Holm	\$0.00	(\$1,824.00)	\$822,594.57
5/31/2022	Interest on Account	\$68.06	\$0.00	\$822,662.63
6/10/2022	Co. Collections	\$14,880.91	\$0.00	\$837,543.54
6/30/2022	Interest on Account	\$71.61	\$0.00	\$837,615.15
7/22/2022	Co. Collections	\$5,688.02	\$0.00	\$843,303.17
7/31/2022	Interest on Account	\$73.12	\$0.00	\$843,376.29
8/2/2022	Co. Collections	\$6,498.60	\$0.00	\$849,874.89
8/10/2022	Baird Holm	\$0.00	(\$1,488.00)	\$848,386.89
8/31/2022	Interest on Account	\$71.99	\$0.00	\$848,458.88
9/16/2022	Co. Collections	\$35,730.58	\$0.00	\$884,189.46
9/30/2022	Interest on Account	\$81.17	\$0.00	\$884,270.63
10/12/2022	Auburn Newspapers	\$0.00	(\$156.16)	\$884,114.47
10/12/2022	Baird Holm	\$0.00	(\$3,109.25)	\$881,005.22
10/12/2022	JEO Consulting	\$0.00	(\$3,850.00)	\$877,155.22
10/17/2022	Co. Collections	\$8,164.23	\$0.00	\$885,319.45
10/31/2022	Interest on Account	\$411.17	\$0.00	\$885,730.62
11/10/2022	Co. Collections	\$1,570.23	\$0.00	\$887,300.85
11/30/2022	Interest on Account	\$398.69	\$0.00	\$887,699.54

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EXHIBIT A

Date	Description	Receipt	Disbursement	Balance
12/16/2022	Co. Collections	\$5,491.94	\$0.00	\$893,191.48
12/20/2022	Baird Holm	\$0.00	(\$493.00)	\$892,698.48
12/20/2022	Baird Holm	\$0.00	(\$638.00)	\$892,060.48
12/31/2022	Interest on Account	\$422.12	\$0.00	\$892,482.60
1/6/2023	Baird Holm	\$0.00	(\$4,106.50)	\$888,376.10
1/11/2023	Co. Collections	\$25,567.86	\$0.00	\$913,943.96
1/31/2023	Interest on Account	\$421.14	\$0.00	\$914,365.10
2/8/2023	Co. Collections	\$6,381.09	\$0.00	\$920,746.19
2/14/2023	Baird Holm	\$0.00	(\$626.50)	\$920,119.69
2/28/2023	Interest on Account	\$387.78	\$0.00	\$920,507.47
3/7/2023	Co. Collections	\$17,389.27	\$0.00	\$937,896.74
3/31/2023	Interest on Account	\$437.16	\$0.00	\$938,333.90
4/14/2023	Co. Collections	\$17,531.36	\$0.00	\$955,865.26
4/30/2023	Interest on Account	\$429.66	\$0.00	\$956,294.92
5/11/2023	Co. Collections	\$50,133.10	\$0.00	\$1,006,428.02
5/11/2023	Baird Holm	\$0.00	(\$1,305.00)	\$1,005,123.02
5/17/2023	Korner Kitchen	\$0.00	(\$4,420.50)	\$1,000,702.52
5/31/2023	Interest on Account	\$459.05	\$0.00	\$1,001,161.57
6/20/2023	Co. Collections	\$26,083.69	\$0.00	\$1,027,245.26
6/20/2023	Korner Kitchen	\$0.00	(\$556.68)	\$1,026,688.58
6/30/2023	Interest on Account	\$470.64	\$0.00	\$1,027,159.22
7/12/2023	Baird Holm	\$0.00	(\$725.00)	\$1,026,434.22
7/18/2023	Co. Collections	\$6,434.14	\$0.00	\$1,032,868.36
7/31/2023	Interest on Account	\$482.56	\$0.00	\$1,033,350.92
8/11/2023	Co. Collections	\$5,115.02	\$0.00	\$1,038,465.94
8/31/2023	Interest on Account	\$607.48	\$0.00	\$1,039,073.42
9/11/2023	Co. Collections	\$36,485.31	\$0.00	\$1,075,558.73
9/30/2023	Interest on Account	\$513.41	\$0.00	\$1,076,072.14
10/20/2023	Co. Collections	\$18,672.84	\$0.00	\$1,094,744.98
10/31/2023	Interest on Account	\$462.44	\$0.00	\$1,095,207.42
11/20/2023	Co. Collections	\$3,636.82	\$0.00	\$1,098,844.24
11/30/2023	Interest on Account	\$707.39	\$0.00	\$1,099,551.63
12/19/2023	Co. Collections	\$1,812.78	\$0.00	\$1,101,364.41
12/31/2023	Interest on Account	\$529.19	\$0.00	\$1,101,893.60
Totals		\$1,396,579.92	(\$294,686.32)	