



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Mike Foley
State Auditor

Mike.Foley@nebraska.gov
PO Box 98917
State Capitol, Suite 2303
Lincoln, Nebraska 68509
402-471-2111, FAX 402-471-3301
auditors.nebraska.gov

July 11, 2024

Peggy Lawton, Board Chairperson
Cass County Sanitary and Improvement District No. 1
10250 Regency Circle, Suite 300
Omaha, NE 68114

Dear Ms. Lawton:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding certain expenditures made by the Cass County Sanitary and Improvement District No. 1 (District). Additionally, the District was alleged to have exceeded its budgeted expenditures. 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 District. 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.

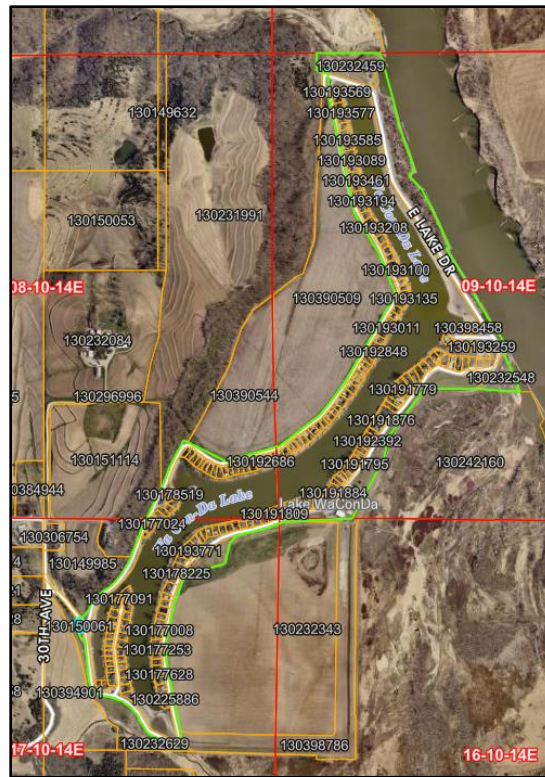
Nevertheless, during the course of the preliminary planning work, the APA noted certain issues that merit corrective action.

Background Information

The District is located in Cass County, Nebraska. According to its website (<http://www.sid1.org/>), the District issues tax-free warrants and bonds to pay for public improvements. The District pays for those warrants and bonds through special assessments and tax levies. The Board of Trustees (Board) is responsible for all activities relating to streets, water and sewer systems, and other public improvements within the District. However, much of this work is subcontracted to the Lake Wa-Con-Da Association (Association), which employs a maintenance specialist – i.e., “caretaker” – for both the District and the Association.

According to the Nebraska Secretary of State’s website (<https://sos.nebraska.gov/>), the Association is a mutual benefit non-profit corporation established on April 7, 1967. Its own Board of Directors is responsible for the general supervision of the Association. The Association acts as a homeowners association within the boundaries of the District, and the Association and the District coordinate efforts to provide services to the residents of the District.

Per its website (<https://www.lakewaconda.com/>), the Association is located on Lake Wa-Con-Da, which is south of Omaha, Nebraska, and east of Highway 75 between the villages of Murray and Union, Nebraska. A map of the lake is shown below.



The following comments and recommendations, which have been discussed with the appropriate members of the District and its management, are intended to improve internal control or result in other operating efficiencies.

Comments and Recommendations

1. Agreement with Association and Use of District Property

According to its representatives, the District lacks the resources to manage employees; therefore, the District sub-contracts most of its duties to the Association. As mentioned previously, the Association employs a caretaker who performs services for both the Association and the District.

The District and Association entered into an agreement on July 22, 1986, whereby the District uses the services of the Association for, among other things, inspecting and maintaining the District’s water supply and street systems, filing reports with the State, and providing security for the District’s territory and the homes therein. As compensation, the District pays a monthly fee and, upon approval by the Board, all reasonable and necessary expenses incurred by the Association in providing those services. The original agreement states the following:

2. Compensation. As full compensation for services rendered to the District by the Association in the above-captioned capacities and any further extensions thereof, the District shall pay to the Association the amount of One Thousand One Hundred Twelve Dollars and 50/100 (\$1,112.50) per month. The District shall further consider reimbursing the Association for all reasonable and necessary expenses incurred by it in carrying out its duties under this Agreement. Such expenses shall be approved by the District prior to being incurred.

According to District representatives, the terms of this agreement have been modified several times over the years. The most recent of these modifications occurred on September 15, 2023, when the Board approved increasing the maximum monthly payment amount to \$9,200 to “reflect additional Association out-of-pocket expenses.”

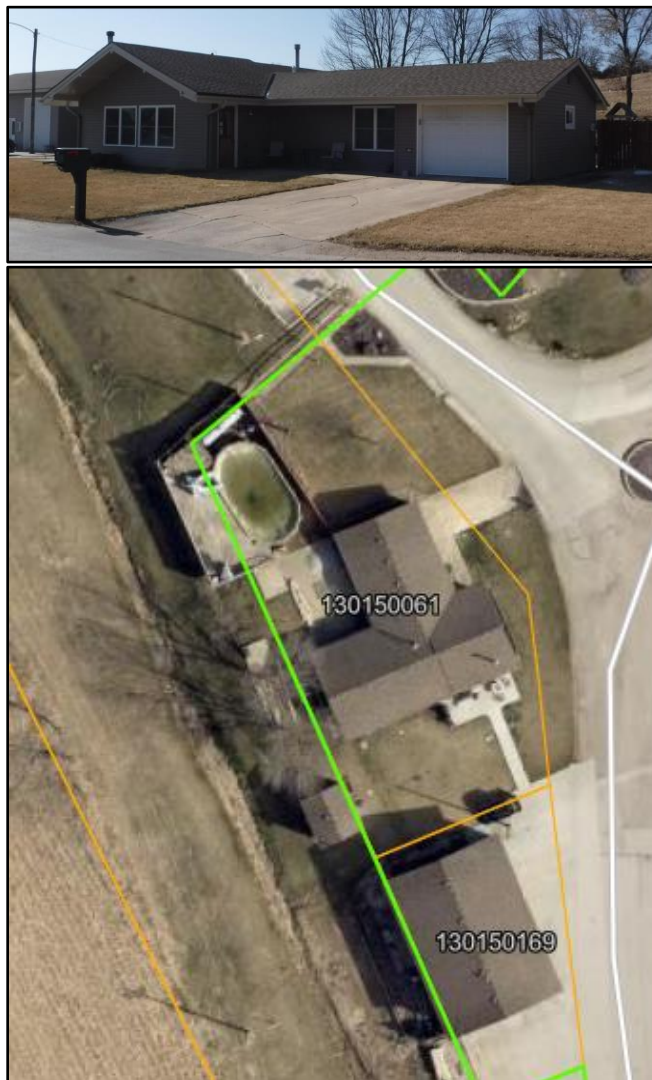
In response to an inquiry about the work performed by the caretaker, District representatives provided the APA with the following explanation:

While a caretaker is an employee of the Association, estimates are approximately ninety percent (90%) of his labor and efforts are for the benefit of the District and not the Association. The caretaker is responsible for managing the District's recreational areas and most significantly the lake. He is in charge of overseeing and maintaining lake levels by operating the pumps controlling water flow. He provides maintenance of all green space areas, historically using equipment owned by the Association. He attends virtually all meetings of the Trustees of the District reporting on the maintenance of critical District infrastructure, such as its water system and roads. The caretaker also works significantly with the District engineers on these matters.

In addition to the monetary compensation paid to the Association for services provided, the caretaker is permitted to live rent-free in one of the District's properties. The District owns several of the properties located along Lake Wa-Con-Da. Among those is parcel #130150061, which is owned by the District under the name "SID 1 C/O LAKE WACONDA ASSOCIATION" according to the Cass County Geographic Information System (GIS) website (<https://gis-cass.hub.arcgis.com/>). This property, located on the southwest side of Lake Wa-Con-Da, is a three-bedroom, one-bathroom, single-family residence with a current valuation of \$178,655 and is exempt from property taxes due to being owned by the District. The estimated monthly rental payment for this property would be approximately \$950 based on the value of comparable homes in the area.

According to documentation obtained by the APA, the current caretaker appears to have lived at this property for at least 10 years. Therefore, the estimated value of the apparent benefit that the caretaker has received from this rent-free lodging over the past decade would total approximately \$114,000.

Shown below are photos of the property from the Cass County GIS.



The APA asked the District if there was a policy, agreement, or contract between either (1) the District and the Association, (2) the District and the caretaker, or (3) the Association and the caretaker that provided for the caretaker's use of the District property as a personal residence. However, the District appears to lack any such formalized understanding. District representatives informed the APA, in fact, that they were unaware of any written rental or tenant agreement among any of the parties. Therefore, the caretaker seems to be residing for free in a home owned by the District, having no obligation to pay for either rent or utilities.

Such an informal arrangement appears problematic for, at least, a couple of reasons. To start, as noted by the Nebraska Supreme Court (Court), "A sanitary and improvement district [SID] is a legislative creature, a political subdivision of the State of Nebraska." *Sanitary & Improvement Dist. No. 1 v. Adamy*, 289 Neb. 913, 922, 858 N.W.2d 168, 176 (2015). As such, the Court has explained further, an SID "can exercise only those powers expressly granted to it by statute or necessarily implied to carry out its expressed powers." *Sanitary & Improvement Dist. No. 67 of Sarpy Cty. v. State of Neb. Dep't of Rds.*, 309 Neb. 600, 613, 961 N.W.2d 796, 806 (2021). Referencing Neb. Rev. Stat. § 31-732 (Reissue 2016), moreover, the Court has observed also that an SID is "granted the power by statute 'to take and hold real and personal property necessary for its use.' But any exercise of that power is plainly limited to being a product of the SID's public function." *Id.*

The APA is unaware of any statutory authority for an SID to allow someone to live on, or otherwise use, its property rent free or absent some other form of valuable consideration. This gives rise to another serious concern involving the "public purpose" doctrine – a "constitutional principle," according to the Nebraska Attorney General, that prohibits "allowing a private entity to use state funds or property for a direct benefit to private industry with only a remote or indirect benefit to the public." Op. Att'y Gen. No. 95034 (May 1, 1995). This precept, the Court has opined, is "grounded on the 'fundamental concepts of our constitutional system.'" *State ex rel. Douglas v. Thone*, 204 Neb. 836, 842, 286 N.W.2d 249, 252 (1979) (quoting *Beck v. City of York*, 164 Neb. 223).

It has been estimated that the caretaker spends as much as 90% of his time performing services for the District. The compensation for that work is set out fully in the July 22, 1986, agreement described on page 2 herein. No provision for the caretaker's lodging is included in the specified remuneration. Absent a specific rental or tenant contract, or a revision to the compensation provision of the current agreement with the Association, the District is essentially granting the caretaker gratuitous use of public property – something that appears not only to lack the requisite statutory authorization but also to contravene the "public purpose" doctrine, as described above.

Good internal controls require procedures to ensure that all compensation – including employee housing – provided by the District for vendor services is specified in a formal agreement approved by the Board. If use of a District residence is not a provision of a vendor agreement, a separate rental or tenant contract, which specifies the amount of payment to be received for that use, should be executed to formalize any such living arrangement authorized by the Board.

Without such procedures, there is an increased risk for not only loss and misappropriation of District funds but also concerns regarding the improper use of property.

We recommend the implementation of procedures to ensure all compensation – including employee housing – provided by the District for vendor services is specified in a formal agreement approved by the Board. If use of a District residence is not a provision of a vendor agreement, a separate rental or tenant contract, which specifies the amount of payment to be received for that use, should be executed to formalize any such living arrangement authorized by the Board.

2. Expenditures in Excess of Budget

For the fiscal years ending June 30, 2020, through June 30, 2023, actual expenditures exceeded the District’s adopted budget by as much as \$3.6 million. The following table shows both the budgeted and actual amounts for each of these four fiscal years.

Year	Adopted Budget	Actual	Variance
2019-2020	\$942,103	\$1,353,615	\$411,512
2020-2021	\$729,183	\$3,402,136	\$2,672,953
2021-2022	\$2,819,856	\$6,492,490	\$3,672,634
2022-2023	\$1,044,451	\$1,410,377	\$365,926

No amended budget was filed with our office for these additional expenditures.

Neb. Rev. Stat. § 13-510 (Reissue 2022) states the following:

Whenever during the current fiscal year or biennial period it becomes apparent to a governing body that due to unforeseen emergencies there is temporarily insufficient money in a particular fund to meet the requirements of the adopted budget of expenditures for that fund, the governing body may by a majority vote, unless otherwise provided by state law, transfer money from other funds to such fund. No expenditure during any fiscal year or biennial period shall be made in excess of the amounts indicated in the adopted budget statement, except as authorized in section 13-511, or by state law. Any officer or officers of any governing body who obligates funds contrary to the provisions of this section shall be guilty of a Class V misdemeanor.

If expenditures are expected to exceed budgeted amounts, the District must amend its budget accordingly. Neb. Rev. Stat. § 13-511(1) (Reissue 2022) provides the following:

Unless otherwise provided by law, whenever during the current fiscal year or biennial period it becomes apparent to a governing body that (a) there are circumstances which could not reasonably have been anticipated at the time the budget for the current year or biennial period was adopted, (b) the budget adopted violated sections 13-518 to 13-522, such that the revenue of the current fiscal year or biennial period for any fund thereof will be insufficient, additional expenses will be necessarily incurred, or there is a need to reduce the budget requirements to comply with sections 13-518 to 13-522, or (c) the governing body has been notified by the auditor of a mathematical or accounting error or noncompliance with the Nebraska Budget Act, such governing body may propose to revise the previously adopted budget statement and shall conduct a public hearing on such proposal. The public hearing requirement shall not apply to emergency expenditures pursuant to section 81-829.51.

When expenditures exceed the amounts budgeted with no appropriate budget amendment by the Board to address those excesses, the District is noncompliant with State statute, further increasing the risk for loss and/or misuse of funds.

We recommend the Board implement procedures for monitoring closely its budget status on an ongoing basis to avoid incurring expenditures in excess of the amount budgeted, amending the budget as necessary to accommodate any unforeseen expenses.

* * * * *

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 District.

Draft copies of this letter were furnished to the District to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. The District declined to respond.

This communication is intended solely for the information and use of the District and its 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

Sincerely,



Craig Kubicek, CPA, CFE

Deputy Auditor

Auditor of Public Accounts

Room 2303, State Capitol

Lincoln, NE 68509

Phone (402) 471-3686

craig.kubicek@nebraska.gov