



Vermont Economic Progress Council
Agency of Commerce and Community Development
6th Floor, Deane C. Davis State Office Building
1 National Life Drive, Montpelier, VT 05620-0501

Monday, May 13, 2019

The Honorable Douglas R. Hoffer, State Auditor
132 State Street
Montpelier, VT 05633-5101

Dear Mr. Hoffer,

The Vermont Economic Progress Council (VEPC) thanks you for the opportunity to offer management comments and thanks your staff for their professional demeanor throughout the Saint Albans Tax Increment Finance (TIF) audit process.

VEPC convened a special meeting of the Council on May 7, to enable Council members and staff to assess the findings and recommendations of the Saint Albans TIF District five-year Performance Report Draft Audit. As an Independent Board, the Council believes it is important to maintain its independence in these comments and chose not to invite outside parties to stay for the Executive Session as only the Auditor and not Auditee was present.

There are important points in this report that VEPC will study in the next several months and make determinations on. Indeed, all the recommendations to VEPC are areas that we will review and update. The Council welcomes constructive dialog with the State Auditor's Office on a range of topics to be reviewed and acted upon in the Council's coming monthly meetings and summer retreat. These topics include, but are not limited to:

- a clearer definition of when a substantial change request is needed,
- the use of TIF debt proceeds to pay debt before increment occurs,
- related costs,
- how the Council and State Auditor collaborate in developing clearer guidelines

The authority entrusted to VEPC to administer Vermont's TIF Program is one that the Council takes seriously. We work closely with Vermont's TIF municipalities to ensure use of State Education Fund incremental dollars complies with statute and TIF Rule. The Council's role in administration is one of assisting Districts in their compliance through review of related materials, frequent communication, monitoring visits, and the use of a substantial change process and enforcement.

As you know, TIF is a complex program that has undergone several statutory revisions in its history. These revisions have informed VEPC's role in TIF as well as the rules and expectations



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prescribed to TIF Districts. At times they have also, as cited in the SAO report, led to confusion about process and expectations. If this confusion causes errors or omissions, it is important that relevant State entities work constructively with Districts to ensure tax funds are appropriately used and support the best chance of success for our communities.

The Saint Albans Audit and the Draft Report identified items for VEPC to review. The review has already begun with the submission of a Substantial Change Request by Saint Albans in January of 2019. Questions have also been raised that affect all Districts and the administration of the program.

Outside of the report content the Council believes that the tone of the audit report's current draft title does not embody a constructive approach. It appears to pronounce a verdict or judgment, where the governing authorities on these matters have not yet made one. The report's draft title, "*Unauthorized Use of TIF District Debt and Understatement of Tax Increment; Saint Albans Owes TIF District and State Education Fund*" encourages a negative perspective from the onset. It is contrary to the core values described in the Vermont State Auditor's Professional Standards Manual (PSM), namely, "The working relationship developed with the audited agency or department is important to any audit's success." And "Auditors must be aware that they have an analytic, not policy making, role. With this understanding, audits and audit reports are fair, objective, and unbiased."

Such a title does not align with the conclusions and recommendations in the report, which prescribe VEPC take actionable steps to provide clarification and review compliance.

Following this letter, please find the Council's observations pertaining to specific sections of this report where VEPC believes its perspective is merited.

On behalf of the Vermont Economic Progress Council,

John Davis,
Chair
Vermont Economic Progress Council

Megan Sullivan,
Executive Director
Vermont Economic Progress Council



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VERMONT ECONOMIC PROGRESS COUNCIL- SAINT ALBANS TIF DISTRICT PERFORMANCE AUDIT DRAFT REPORT, MANAGEMENT COMMENTS

Having been requested by the State Auditor to provide Management Comments on the Saint Albans TIF District Performance Audit Draft Report, VEPC offers the following comments on certain report findings and the recommendations for VEPC.

Background

We find it useful to provide additional information on the Saint Albans TIF District performance as it relates to the full statutory definition of the purpose of Vermont's TIF program.

24 V.S.A. § 1893- Purpose

The purpose of tax increment financing districts is to provide revenues for improvements that serve the district and related costs, which will stimulate development or redevelopment within the district, provide for employment opportunities, improve and broaden the tax base, or enhance the general economic vitality of the municipality, the region, or the State.

Saint Albans applied to VEPC after years of a stagnant grand list. Without growth in a grand list there is likely an increase in the tax rate for citizens to keep funding whole. The use of TIF combined with the work of the Saint Albans city's staff, City Council and the citizens of Saint Albans, the city has been able to reverse that trend; between the 2012 the 2017 grand list years, there has been a 45.4% increase in the TIF District grand list.

The Saint Albans TIF District became active in 2013 and its measurable outcomes go beyond costs and benefits to the Education Fund and reflect directly on the purpose statement in Statute. This program has enabled a more vibrant and economically sound anchor downtown in Vermont's Northwest quadrant. There have been considerable transportation enhancements, and remediation and redevelopment of brownfield sites that have stimulated private development and provided employment opportunities and greater economic vitality.

The cost to the Education Fund referred to in this report citing a report by Vermont's Joint Fiscal Office provides incomplete analysis of how TIF works, which the Council communicated at the time that report was issued. The assertion that private development would have happened regardless of TIF, is not shared by this Council. The Council has studied this program and its participating Districts in great detail. When a TIF District is established, the Original Taxable Value of the parcels in that District is frozen. That means that the Education Fund will not receive any less money than that Original Taxable Value. Even if values fall, the State Education Fund will remain whole. As private development occurs following the public investments financed through TIF, a portion of the new development's tax increment will be



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added to that Original Taxable Value, thereby increasing the amount going to the Education Fund each year.

Objective 1: TIF Financed Eligible Infrastructure Improvement Costs and Related Costs but also Funded Unauthorized Uses (Pages13-29)

Core Brownfield expenditures

At VEPC's July 28, 2012 meeting in which the project criteria for this District were approved it was moved and approved by VEPC in regards to the Core Brownfields project that, "at least one of the proposed redevelopment projects will cause the remediation and redevelopment of that site, and therefore, Project Criterion C, is met." This criterion states that:

- 32 V.S.A. § 5404a(4) (C) The project will affect the remediation and redevelopment of a brownfield located within the district. As used in this section, "brownfield" means an area in which a hazardous substance, pollutant, or contaminant is or may be present, and that situation is likely to complicate the expansion, development, redevelopment, or reuse of the property.

Redevelopment work done on a brownfield area in addition to remediation is an eligible TIF use and one that VEPC approved. However, the Council will, as recommended to the Saint Albans City Manager in this report, work with the District to review the specific redevelopment improvements and related costs incurred through the Core Brownfield project for this hotel site to ensure compliance with statute and rule. Any compliance deviations will be corrected.

Substantial Changes to 2012 TIF District Plan

As this report outlines, Saint Albans submitted a revised financing plan through the Substantial Change process to VEPC in January of 2019. The request was approved by VEPC in February of 2019. This revised financing plan outlined the changes in costs and timeline of projects approved for the Saint Albans TIF District, all of which remained under the initial approved debt ceiling of \$23 million. The city has requested additional review by the Council through this process for determinations of issues raised in this report.

The parameters for a Substantial Change Request and clarity of that process are items that the Council will work to address through the rule-making review process (already underway) with initial reviews and recommendations being drafted by Council staff and ACCD Counsel.

TIF debt proceeds used to make debt payments

Title 24 on Municipal Government and Title 32 on Taxation and Finance both address TIF. In the five-year audit of the Saint Albans TIF, the State Auditor's Office requested and received



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advice from the Attorney General's Office about a TIF District's use of debt proceeds from a TIF bond to pay debt service on the same. The opinion and resulting guidance were limited only to interpretation of the Title 24 statutes authorizing municipalities to incur debt – one set on general debt not connected to TIF and another on financing VEPC-approved TIF projects. It did not address the TIF's rationale or intention for using debt proceeds while waiting for increasing grand list values to generate sufficient increment to cover the payments. However, a number of applicable statutes in Title 32 bear directly on TIF and strongly suggest that a different answer is possible.

Chapter 135 of Title 32 on Education Property Tax lays out the entire approval process assigned to VEPC for the establishing TIF Districts and approving projects therein. In the broader context of VEPC's duties to administer the statewide TIF program, Chapter 135 provides significant substantive and procedural requirements, decision-making criteria, and comprehensive rulemaking authority to provide clarification and detail for administering the TIF program.

VEPC asked the Attorney General Office to consider key Chapter 135 provisions including VEPC's duty to apply the "but for" test, the April 1 demarcation for grand list determination, and the authorization for municipalities to use increment during the full retention period. 32 VSA 5404a(f) in pertinent part broadly provides, "*Any* use of education property tax increment approved [by VEPC] ... shall remain available to the municipality for the full period authorized...." (emphasis added).

VEPC's request highlighted the practical impediment to paying debt service in the first years of the retention period when a TIF project has yet to benefit from an increase in annual April 1 grand list determinations to generate sufficient increment to fully cover the early debt service payments. Delayed access to tax increment would not cause a net cost increase to the municipality where the municipality used bond proceeds to pay TIF debt in the beginning.

A broader look at this issue considering the controlling statutes in Chapter 135 would provide essential advice to VEPC. The Council is considering this issue from the perspectives of opinions issued by all relevant parties and the intent of Titles 24 and 32 in aggregate.

Objective 3 FY2017 TIF District Debt Payments an Eligible Use of Tax Increment (Pages 34-35)

City's compliance with Public Notice Requirements Prior to Obtaining Voter Approval

As this finding relates to the oversight by VEPC, staff will continue to assist all TIF Districts on public notification requirements and tracking through the recordkeeping process. An internal checklist is now provided proactively to Districts to help them meet all requirements.



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Recommendations to VEPC

Three of the Recommendations in this report ask VEPC to make clarifications in the TIF Rule.

The TIF Rule was created in accordance with Statute in 2015. It provides more detailed guidance in areas that were not made fully clear in Statute. After four years of administering this rule, we concluded that there is a need for further clarification and improved guidance to TIF Districts and to the Council.

VEPC has been reviewing all sections of the TIF Rule with the Tax Department's Property Valuation and Review staff. Once this initial review is complete, VEPC will engage the TIF Districts and other partners and go through the Rule Making process for public input and adoption. The areas for recommendation will be considered during this process so that we can best serve the Districts as stewards of State tax dollars.

Regarding the FAQ document: While there is value in having a FAQ section available on our website, such a document does not have any legal bearing. The Council therefore will look at the recommendation in context of the TIF Rule update and will adjust the FAQ document to harmonize with any determinations made through that rule making process.