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August 10, 2011

FINAL REPORT TRANSMITTAL LETTER

Honorable Wayne County Commissioners:

Enclosed is our final copy of the Office of Legislative Auditor General's Attestation/Assurance Engagement report on the Wayne County Land Bank – Pinnacle Race Track Development. Our report is dated July 18, 2011; DAP No. 2010-57-004. The report was accepted by the Audit Committee July 26, 2011, and formally received by the Wayne County Commission on August 4, 2011.

We are pleased to inform you officials from the Wayne County Land Bank and the Department of Management & Budget provided their full cooperation. If you have any questions, concerns, or desire to discuss the report in greater detail, we would be happy to do so at your convenience. This report is intended for your information and should not be used for any other purpose. Copies of all Office of Legislative Auditor General's final reports can be found on our website at: http://www.waynecounty.com/commission/lagreports.htm

Willie Mayo, CPA, CIA, CICA
Auditor General

REPORT DISTRIBUTION

Wayne County Land Bank
Jano Hanna, Director

Wayne County Treasurer
Honorable Raymond J. Wojtowicz, Chair of Wayne County Land Bank

Department of Economic Development Growth Engine (EDGE)
Turkia Mullin, Director and Chief Development Officer

Department of Management & Budget
Carla E. Sledge, Chief Financial Officer
Terry L. Hasse, Director, Grants Compliance and Contracts Management

Wayne County Corporation Counsel
Steven Collins, Assistant Corporation Counsel

Wayne County Executive

Independent Auditor's Report on

County of Wayne, Michigan
Wayne County Land Bank Corporation

PINNACLE RACE TRACK DEVELOPMENT

Attestation/Assurance Engagement

July 18, 2011

REPORT SUMMARY

Type of Engagement, Scope, and Methodology

We performed an attestation/assurance engagement for the purpose of responding to a request from the Wayne County Commission to determine whether the type and quantity of jobs related to the Pinnacle Race Track Development were created as outlined and required in the related Development Agreement.

The scope of the engagement included the date the commission approved the Term Sheet for this development, April 3, 2008 (the Commission Chair at the time granted exigent approval on March 17, 2008) through the date our fieldwork was materially completed, July 18, 2011. An array of professional and recognized audit techniques, procedures and processes were utilized in the execution of our examination.

Background

On April 3, 2008, the Wayne County Commission approved the Term Sheet (TS) related to the Pinnacle Race Track Development (development) located on county property, southwest of the Detroit-Wayne County Metropolitan Airport. This stretch of property is generally referred to as Pinnacle Aeropark. A Development Agreement (DA) was ultimately executed for this development and included the Wayne County Land Bank Corporation (WCLB), Post It Stables, Inc. (developer/owner), Charter County of Wayne, Michigan, Charter Township of Huron, Michigan, and the Wayne County Economic Development Corporation. Essentially, the DA allowed the developer to construct a thoroughbred race track and related facilities on county land and the county would convey 320 acres of land to the developer if they created 1,100 construction and 1,200 operations jobs, and invested a minimum of $18 million in project development.

Objective #1:

Determine if developer created the 1,100 construction employment jobs and 1,200 new FTE employment positions (operation jobs).

Conclusion

We were unable to validate or determine whether the Developer created the quantity and types of jobs required of them in the Development Agreement (DA) due to a host of factors. Some factors which would not allow us to determine if the jobs were created were: (1) The Wayne County Land Bank, the lead county agency for this project, failed to retain supporting documentation of their efforts to substantiate the certified jobs report provided by the developer; (2) the jobs report failed to include essential and important data regarding the created jobs required in the DA; (3) although not a requirement, the development agreement failed to require the jobs report to be independently certified; and, (4) there are also concerns as to the methodology used by the developer to account for jobs created.

Further, commission leadership should suggest the commission retains control over these type transactions in the future and not transfer them to a component unit of government.

We are unsure as to the economic soundness of investing more than $35.2 million into a venture designed to create 2,300 job and future collection of property taxes without the commission consulting with a professional external investment advisor to perform an independent feasibility study of the project.

We recommend WCLB:

Recommendation 2010-01

Develop appropriate internal controls, processes and monitoring mechanisms, including checklists, to ensure each and every major requirement or condition within a development agreement is met or achieved.

Recommendation 2010-02

Develop a record retention policy and procedure that requires evidence or documentation related to verifying that requirements or conditions in development agreements be filed and maintained for a reasonable period of time after the related project is considered complete.

Recommendation 2010-03

Consider development of a policy and procedure to require verification of requirements and conditions contained in development agreements be performed by an independent party other than the WCLB, the developer, or county attorney.■

Objective #2a:

Determine whether the project met requirements for participation in the Transforming Underdeveloped Resident and Business Opportunities (TURBO) Program.

Conclusion
The annual report for FY 2008 submitted in 2009 by the Wayne County Land Bank (WCLB) to their board of directors and the State of Michigan, identified the Pinnacle Race Track as a Transforming Underdeveloped Resident and Business Opportunities (TURBO) project. However, all of the necessary and required documents for participation in the program were not found in the project file maintained by WCLB, nor were they subsequently provided.

The WCLB, Department of Economic Growth Engine (EDGE), and their representatives contend the project was not a TURBO project and did not receive the program benefits.

It is true that the project did not receive the benefits associated with the program that we estimate to date could have been as much as $1.12 million, but since the developer never paid its real property taxes, it could not receive any intended incentive including reimbursement for portions of taxes paid.

The following are the recommendations related to this finding.

Recommendation 2010-04
In all instances, fully comply with the TURBO Program criteria and guidelines for each potential participating developer in order to ensure transparency, uniformity and consistency among prospective developers.

Recommendation 2010-05
Consider establishing a policy that requires periodic self-assessments (or independent assessments) to determine compliance with program guidelines and any findings, along with a corrective action plan, be reported to the WCLB board of directors.■

Objective #2b:

Determine if key requirements and conditions in the Term Sheet (TS) and Development Agreement (DA) are identical.

Conclusion
Our review of both the Term Sheet and Development Agreement revealed that most of the key requirements and conditions contained in the Term Sheet are essentially identical in form and substance to those in the DA. However, we found instances in which the documents did not agree. The primary differences between the two documents were due to the DA not being executed in the timeframe required by the commission resolution, and a bond loan provision in the DA that was not in the Term Sheet approved by the Wayne County Commission. We do not believe the differences violated any significant provisions related to this project.

However, the TS was the only significant document the commission was provided regarding this development, and the related resolution they approved indicated the conditions and requirements in the TS must be generally the same in the DA. These inconsistencies could raise legal questions as to the validity of the DA and whether the county's conveyance of 320 acres of land to the developer was in accordance with the conditions as outlined in the resolution.

Recommendation 2010-06

We recommend WCLB and/or EDGE develop and implement appropriate procedures and processes to ensure requirements and conditions in future development agreements reflect fully and completely, the items contained in a related Term Sheet as approved by the commission.

Recommendation 2010-07

We recommend the Wayne County Commission consider discontinuing the practice of approving the term sheet as a stand-alone document for large economic development activity and instead, require the related development agreements to be approved by the commission before an agreement is reached.

Recommendation 2010-08

We recommend the Wayne County Commission consider establishing a policy defining when independent consultants should be contracted to render an opinion or assessment on significant economic development initiatives involving conveyance of county owned or controlled land in exchange for non-monetary goods or services.■

Objective #3:

Compare industry best practices to the project and related Development Agreement.

Conclusion

Our comparison of Race Track industry best practices for public sector economic development/activity to the Pinnacle Race Track Development and its DA found the WCLB and county EDGE officials have incorporated many of the best practices cited by the Government Finance Officers Association. However, we did identify instances in which some key best practices could have been incorporated into the DA in order to strengthen the agreement.

The best practices not fully incorporated or evidenced included: a sound development agreement, verified financing, sufficient monitoring and a clawback or restricted/limited land use provision. A key objective for this development, per a WCLB representative, was to return dormant county property to the tax rolls. That objective has not been achieved because, to date, the developer/owner has not paid any real property taxes. According to recent newspaper articles, the unpaid real property taxes for years 2009 and 2010 total $2.24 million.

Also, the developer/owner sold a portion of the 320 acres of land the county conveyed to them for $1.00 to an Indian Tribe, which removes forever the property from the tax rolls since Indian owned land under federal law is exempt from property taxes. Incorporating each of the omitted best practices into the DA for this development may not have mitigated all of the losses or risk experienced with this project, but we believe they would have been significantly reduced.

Recommendation 2010-09

We recommend WCLB and EDGE undertake a comprehensive review to assess their current policies, procedures and practices related to development agreements and other aspects of public section economic development activity and incorporate the best practices into their processes in order to enhance uniformity, transparency, and efficiency and reduce the potential cost of County assets and resources.■

Subsequent Events

Professional auditing standards require auditors to disclose events that occurred after the completion of their fieldwork, but before issuing a report, that may have a material impact on the facts and conclusion being reported on. Numerous events have occurred related to this report and its subject matter and the sustainability of the development itself. Specifically, events have occurred during and subsequent to completion of our fieldwork that we believe are profound and of significant importance to the Pinnacle Race Track Development.

Many of the troubling events have been reported in the media both in print and on local television news. These media articles/reports dealt mainly with the sale of the land, discontinuation of operations, and surrendering of race licenses. Either separately or collectively, these reported events do not bode well for the development and its ability to fulfill the promise of thoroughbred horse racing as a catalyst to spur economic development in the Aeropark/Pinnacle portion of land.

Although, the developer closed the facilities in 2011, a recent newspaper article stated, in part, that: "Post It Stables, Inc. is not precluded from working to resolve financial viability issues and to submit an application for the 2012 horse racing season."

Views From Responsible Officials

We have discussed the findings in this engagement with management and they principally disagree with our findings and the related recommendations. Attached as an appendix to this report is management's response to the report, as well as the OAG comments pertaining to their responses.

REPORT DETAILS

PURPOSE / OBJECTIVE

We performed this engagement at the request of the Wayne County Commission. The request specifically asked the Office of Legislative Auditor General to "determine if the Developer created the required jobs in accordance with the terms of the agreement." The requested engagement is centered around a Development Agreement involving the Charter County of Wayne, Michigan, Wayne County Land Bank Corporation (WCLB), Township of Huron, Michigan, Wayne County Economic Development, and Post It Stables, Inc. for the construction and operation of a thoroughbred horse racing track facility, and commercial development. The Development Agreement (DA) essentially required the county to transfer to Post It Stables, Inc. (the developer) 320 acres of land for $1.00 if it created a certain quantity of construction and operations jobs and provide a required level of financial investment.

Based on the request of the commission and our professional judgment, the objectives for this engagement were:

1) Determine if the Developer created the 1,100 construction employment jobs and 1,200 new FTE employment positions (operation jobs);
2) Identify and assess other matters related to the project or development agreement that came to our attention; and,
3) Compare the development and related development agreement to industry best practices for public sector economic development activity.

SCOPE

We conducted this examination engagement in accordance with the attestation standards as established by the American Institute of Certified Public Accountants, applicable Generally Accepted Governmental Auditing Standards (GAGAS) issued by the Comptroller of the United States of America, and the International Standards for the Professional Practice of Internal Auditing (IIA) issued by the Institute of Internal Auditors and accordingly, included examining on a test basis, evidence supporting the Pinnacle Race Track Development and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

The scope of this engagement covers the period March 17, 2008 through July 18, 2011. The fieldwork for the engagement was materially concluded on July 18, 2011.

METHODOLOGY

In order to address the objectives outlined for this engagement, we performed a variety of procedures including, but not necessarily limited to: (1) thorough reading and understanding of the requirments and conditions contained in the applicable Term Sheet and related Development Agreement; (2) assessed data provided by Wayne County Land Bank and county economic development personnel from the developer regarding the creation of jobs; (3) interviewed or attempted to interview Wayne County Land Bank, Department of Economic Development Growth Engine, Developer and others to obtain an understanding of how requirements and conditions in the Development Agreement were satisfied; and, (4) consulted the Government Finance Officers Association website and publication, *Elected Official's Guide, Economic Development* (May 2009) and other public sector economic development professionals pertaining to best practices regarding economic public sector development activity. We also performed other procedures as considered necessary in order to fully and completely address the engagement objectives.

BACKGROUND

At the request of the former Chair of the Wayne County Commission, the Office of Legislative Auditor General (OAG) conducted an attestation/assurance engagement to determine whether the type and quantity of construction and operations jobs required to be created for the Pinnacle Race Track were satisfied prior to the county's conveyance of 320 acres of land within the property commonly referred to as Pinnacle Aeropark.

The thoroughbred horse racing track and commercial development also known as the Pinnacle Race Track Development (development) was an agreement involving the following parties: Charter County of Wayne, Michigan; Post it Stables, Inc. (developer); Wayne County Land Bank Corporation; Charter Township of Huron, Michigan; and Wayne County Economic Development Corporation. The key personnel responsible for the project consisted of the executive director and staff of the Wayne County Land Bank and the lead counsel from the Department of Corporation Counsel assigned to the Wayne County Land Bank. During the wrap-up phase of the engagement, officials from the Department of Economic Development Growth Engine (EDGE) became involved.

The project's Term Sheet was approved by the Commission Chair through exigent approval on March 17, 2008, and was later affirmed by the full commission through Resolution No. 2008-172, which approved the Term Sheet dated April 3, 2008. The Term Sheet lists the terms, conditions, and requirements which were to be included in the Development Agreement related to the project. The Commission approved the Term Sheet with the requirement that the

Development Agreement would be in the "same form and substance" and that any deviations from the approved Term Sheet would require subsequent commission approval.

The Development Agreement was executed by all parties on July 3, 2008. The terms in the agreement granted Post It Stables, Inc. the option to purchase all rights, title, and interest to 320 acres of property in the Pinnacle Aeropark Tract for $1.00, so long as Post It Stables, Inc. has: (1) made an investment of at least $18 million for Phase I, and (2) created jobs consisting of 1,100 construction and 1,200 operation jobs. The land was conveyed to Post It Stables, Inc. by the Wayne County Land Bank for the amount of $1.00 on October 24, 2008, with an assurance that all requirements and conditions set forth regarding the conveyance of the land in the Development Agreement were fully satisfied.

Pinnacle Race Track Pavilion

Ground Breaking for Race Track

The Development Agreement also included a provision involving a Term Lease Agreement between the Wayne County Land Bank Corporation and Post It Stables, Inc. Essentially, it allowed the Land Bank to charge Post It Stables, Inc. an annual lease amount of $300,000 if Phase I of the development or the creation of jobs was not satisfied by July 1, 2009. Initially, it appears Post It Stables, Inc. intended to obtain a bank loan secured by the leasehold improvements to the land in order to finance its $18 million investment requirement. Management informed us that the loan never materialized and the developer "self-financed" the investment in the amount of almost $30 million. The Pinnacle Race Track opened its doors for business on July 18, 2008. This signaled that Phase I of the multiple phase development was completed.

<u>Developer Failed to Respond to our Inquiries</u>

The OAG made several attempts to contact the developer. Our efforts were generally coordinated through WCLB personnel and the attorney representing the developer. At one point, the attorney agreed to assist and respond to our inquiries but ultimately did not. Had we received their assistance, our analysis and conclusions on the objectives may have been different.

JOBS CREATION

Objective # 1

Determine if the Developer Created the 1,100 Construction Employment Jobs and 1,200 New FTE Employment Positions (Operation Jobs).

Conclusion

We were unable to validate or determine whether the developer created the quantity and types of jobs required of them in the Development Agreement (DA) due to a host of factors. Some factors which would not allow us to determine if the jobs were created were: (1) The Wayne County Land Bank, the lead county agency for this project, failed to retain supporting documentation of their efforts to substantiate the certified jobs report provided from the developer; (2) the jobs report failed to include essential and important data regarding the created jobs required in the DA; (3) although not required, the jobs report was not independently certified; and, (4) other questions and concerns were raised regarding the certified jobs report along with actions of the developer and county personnel.

Criteria

The following are two (2) key requirements within the Development Agreement, which Post It Stables, Inc. was required to satisfy prior to the conveyance of land.

Section 3.20 (DA) Job Creation

Developer generate with respect to this project at least:

1. 1,100 construction employment jobs during the period following the date upon which the Developer commenced project planning and pre-development work, and ending thirty-six (36) months following the date upon which Developer commenced actual, physical work on Phase I not later than the sixth (6th) anniversary of the Effective Date; and
2. 1,200 new FTE employment positions in connection with the operations and management of the development and for ancillary businesses should be created.

Section 9.1 & 9.2 (DA) Construction & Operation Job Target

Developer shall certify in writing to the county and the Land Bank, the number of employment positions that it has created, its contractors and subcontractors, in connection with on-site construction activities with regard to development of Phase I, and any subsequent Phase, during the preceding quarterly period. The certification shall describe for each position:

1. Job classification
2. Date of hire
3. Number of hours worked per week
4. Period of time the position has been filled.

The DA further stated, for purposes of meeting the Construction Job Target, the developer shall be entitled to use the highest weekly average employment figure during each quarterly period. At such time as the developer certifies that it has achieved the Construction Job Target based upon the employment date, unless Wayne County objects to the certification within a reasonable period of time and it is determined by Wayne County that the certification is inaccurate, the developer shall be deemed to have met the Construction Job Target, and no further certification shall be required. The DA also required the developer to pay the county monthly lease payments of $300,000 if Phase I or the required jobs were not completed by July 1, 2009.

Conditions

We obtained the jobs report provided to WCLB from the developer and our review indicated the report failed to include all the required and essential information for the certification of construction jobs as required in the DA. Specifically, the report failed to include the following required data related to job creation:

Missing / Omitted Required Data
Construction Jobs Report
Pinnacle Race Track Development

1. Date of hire;
2. Number of hours worked per week; and
3. Period of time the position has been filled

Also, the manner in which the construction jobs were presented and counted appear to have been haphazard, not uniform, and may have caused inaccurate job creation numbers to be reported.

Examples of the troubling methodology used to compute jobs created contained notes that read "…Include Everyone! Even if the maintenance company sent a different mechanic to repair equipment five different times that company would have a total of five people involved with the project…" In another instance, "…and anyone that put any effort into this project even if it was only for an hour…" "…I need the number of people involved for each sub/supplier etc. and your forces or a best guess if not sure…" In addition, in certain instances, the report included jobs such as UPS delivery persons (2), Home Depot (2), and Lowes (2). How these six (6) positions came to be counted as construction jobs is puzzling.

Breeders – 868

There are currently 410 breeders, as members, in the MTOBA including 18 new breeders who have joined MTOBA in 2008. Our research indicates that 217 breeders have created or retained an average of 4 jobs at their farms in connection with their breeding operations, and are directly related to and as a result of the resumption of thoroughbred racing in Metropolitan Detroit.

Off-site Training Facilities – 165

There are currently 7 off-site training facilities for thoroughbred horses in Michigan. Our research indicates that such facilities have created or retained a total of 165 jobs directly related to and as a result of the resumption of thoroughbred racing in Metropolitan Detroit.

The total for thoroughbred horse breeders and trainers off the track would be 868 plus 165, for a total of 1,033. The new Pinnacle Race Course has created a lot of new jobs in Michigan.

Please take 5 minutes and write a simple email response listing the following:

The actual name of any suppliers, delivery of materials, subcontractors, equipment rental / repair, trucking, maintenance, etc and the associated number of people with each and what they did for the project.
Also include your on site self performed employees and any office support.

Example:
From XYZ Company we had 25 on site workers and 4 office support.
ABC Supplier had 8 people manufacturing and 2 for material delivery for a
total of 10.
DEF Trucking had 12 people trucking material to site.
J. Equipment Maintenance Repair had 5 mechanic's on site repairing and servicing equipment.
For a grand total work force of 56.

Include everyone! Even if the maintenance company sent a different mechanic
to repair equipment 5 different times that company would have a total 5 people involved with the project.

1

1st phase of the Pinnacle Race Course.

It is very important for Roncelli, Inc. to include every individual that worked on or had a part in this project.
If everyone could write me a simple e-mail indicating the number of people that took part in this project for your company including but not limited to onsite workers, office support, suppliers, trucking, material delivery, equipment maintenance, and anyone that put any effort into this project even if it was only for an hour.

We would like to show the total work force impact this project had in and around Michigan.

This information is very important for the project.
Please forward no later than Thursday, July 3, 2008 as the number of people have to be tallied over the holiday weekend and submitted to the owner on Monday, July 7, 2008.

Your immediate attention to this is appreciated.

Example:
XYZ Company had a total work force of 54 break down as follows.
Onsite workers - 25
Office support - 4
Suppliers - 9
Trucking - 5
Material delivery - 8
Equipment maintenance - 2
Miscellaneous - 3

Excerpts from Jobs Creation Report

Regarding the operations jobs, though the developer indicated in the jobs report they created 1,506 of the 1,200 required operations jobs, 1,033 are considered horse breeders/trainers. A cursory review of this listing revealed six (6) breeders were included twice; therefore, the quantity of jobs indicated by the developer and accepted by the WCLB and the county is not accurate and we believe fewer actual operations jobs were created than the report "certifies."

We also found the county relied on a report from the Michigan Thoroughbred Owners and Breeders Association (MTOBA) to validate the 1,033 breeders/trainers jobs. Acceptance of such a report was allowable under the DA; however, a potential conflict of interest existed that was not disclosed. The developer's wife and co-owner is a member of the board of directors for MTOBA. We recognize this fact alone does not disqualify MTOBA, but their independence in appearance, as well as in fact, could come into question since disclosure of this fact was not communicated to WCLB and other county officials.

Further, the multiplier aspect used to compute the quantity of these types of jobs, the errors in the report cited above, along with the possible conflict of interest raises questions about the quantity of operations jobs actually created. Moreover, having such a large portion of the operations jobs being breeders/trainers raises other concerns as to whether these are the types of jobs the public and the county commission envisioned when approval was sought for this project. An article, published by the *News Herald*, quotes Township of Huron, Michigan officials as also saying they do not believe the required jobs were created.

In addition, when we attempted to review the efforts undertaken by WCLB to verify the jobs report provided by the developer, they were unable to provide any documentation of their review. We were verbally told that procedures, such as calling individuals listed did occur but the documentation is not available because the official responsible for performing the verification was no longer a county employee and has since passed away. WCLB officials were unable to locate any supporting documentation.

Cause

Wayne County Land Bank failed to develop appropriate internal controls, processes, and mechanisms to ensure their verification of jobs created in accordance with the DA was documented, thorough, and complete. Relevant files and records were not properly maintained which would have allowed for review and verification by an independent third party.

Also, it appears the language in the DA was neither sufficient nor adequate to address the exposure associated with the job creation condition as outlined in the DA. Moreover, WCLB officials and others in county leadership failed to develop a comprehensive verification process to validate the developer's certification of the jobs created.

The former commission chair, Edward Boike, Jr., stated in a newspaper article, in part, that: "the commission lost jurisdiction over the property because it transferred it to the County's Land Bank, which an independent board runs. Commission leadership wants the commission to retain control of future transactions."

Consequences

Accepting the jobs report from the developer without an independent certification exposed the county to unnecessary circumstances that could have been mitigated. More importantly, it exposes the county to the possibility of not achieving the ultimate objectives of job creation and returning dormant property to the tax rolls.

Further, because there was no provision in the DA restricting the sale of the land to tax exempt organizations, WCLB missed the opportunity to return land which was sold to an Indian Tribe back to the tax rolls. The ultimate impact could be the county conveyed 320 acres of prime development land to a private company not required to pay county property taxes and that WCLB failed to adequately validate that the job creation conditions had been fully met prior to the conveyance of the land.

As a result, this was an expensive venture and cost the county more than $35.2 million; $26.6 million in improvement bonds and $8.6 million in county marketable property, in exchange for the creation of 2,300 jobs and future property taxes. We are unsure as to the economic soundness of investing more than $35.2 million into a venture of this nature without the commission consulting with a professional external investment advisor to perform an independent cost benefit analysis of the project.

Recommendation(s)

We recommend Wayne County Land Bank:

Recommendation 2010-01

Develop appropriate internal controls, processes, and monitoring mechanisms, including a checklist, to ensure each and every major requirement or condition within a development agreement is met or achieved prior to the transfer of county property.

Recommendation 2010-02

Develop a record retention policy and procedure that requires evidence or documentation related to verifying that requirements or conditions in development agreements be filed and maintained for a reasonable period of time after the related project is considered complete.

Recommendation 2010-03

Consider development of a policy and procedure to require verification of requirements and conditions contained in development agreements be performed by an independent party other than the WCLB, the developer, or county attorney. ■

Identify and Assess Other Matters

Objective # 2a

Determine Whether Development Met Requirements for Participation in Transforming Underdeveloped Resident and Business Opportunities Program.

Conclusion

Based on the communications we have examined, there are indications that the Wayne County Land Bank and other county officials involved in putting together the race track project intended for the project to participate in the county's Transforming Underdeveloped Resident and Business Opportunities (TURBO) Program and receive tax benefit incentives provided to program participants.

However, all of the necessary and required documents for participation in the program were not found in the project file maintained by WCLB, nor were they subsequently provided. The

WCLB, Department of Economic Growth Engine, and their representatives contend the development was not a TURBO project and it did not receive the program benefits.

It is true that the project did not receive the benefits associated with the program that we estimate to date could have been as much as $1.12 million, but that may be due to the fact the developer never paid its property taxes and therefore was not eligible to receive a reimbursement for a portion of taxes paid.

The following are the recommendations related to this finding.

Criteria

The Wayne County Land Bank Corporation requires all potential TURBO program developers to submit the following documents in order to determine their eligibility for the program:

1. Wayne County TURBO Application;
2. Current Resolution of Corporate Authority (if applicable);
3. Evidence of land (property) ownership in the form of a Deed or other proof;
4. Most recent tax bill;
5. Permits (if available);
6. Proof of Financing / Commitment Letter;
7. Photographs of Property;
8. Brownfield Plan (if applicable); and
9. Insurance Rider

The benefits of participating in the TURBO program are any combination of the following:

A. One year property tax exemption (requires written approval from local unit of government, and the development cannot be open for business); and
B. The 5 / 50 Program (5 Year / 50%), program provides a reimbursement of 50 percent of the total taxes paid on time over a 5-year period.

Condition

While examining the Development Agreement (DA) for this project, we noted a statement indicating "…the project is expected to be subject to a TURBO Development Agreement." The statement was included in the related Brownfield Plan which was an attachment to the DA itself.

In other documents provided or published by WCLB, they also indicated the Pinnacle Race Track Development was, or is intended, to be a TURBO program. Specifically, the 2009 Activity Report for WCLB listed the project as a TURBO program. This report was provided to the Wayne County Treasurer (chairman of the WCLB board of directors), County Commission, County Executive, and the State Authority and was supposed to represent a summary of the agency's projects by program type. Also, the Term Sheet associated with this project speaks to the project possibly utilizing the TURBO program.

Though the project appeared slated to participate in the TURBO program, all of the necessary and required documents for participation were not located in the project file maintained by WCLB, nor were they subsequently provided. The required, but omitted, documents were:

1) TURBO Application
2) Proof of Financing / Commitment Letter

It is unusual for a project of this magnitude not to have documentation on file supporting the developer's ability to finance the project through fruition. It further raises questions of preferential treatment when there is a failure to verify financing capability since the chief development officer and director of EDGE indicated, in a fairly recent media news story involving the troubled Unity Studios development in the City of Allen Park, that the county rejected that development because the developer "never provided proof they had the wherewithal [financing] to do what they promised."

The files we examined for the Pinnacle Race Track Development did not contain evidence the developer had the necessary financial wherewithal prior to the DA being executed by the WCLB. In addition, had the race track developer paid its 2009 and 2010 property taxes, it could have received up to $1.12 million in tax rebate incentives through the TURBO program.

Cause

The WCLB has repeatedly stated to the OAG that the developer did not participate in the TURBO program and has not received any of its benefits/incentives. Wayne County and WCLB officials may have been motivated to place the project in the TURBO program in order to utilize the tax rebate to assist in the re-payment of the Pinnacle Infrastructure Improvement Bonds. The DA included a provision that indicated any tax incentives the project receives would be returned to the county to pay the bond debt service related to the infrastructure bonds.

Consequences

Allowing the developer to participate and receive benefits from the economic development incentive (TURBO), without fully complying with the guidelines, could imply that the WCLB exercises favoritism and that development incentives may not be open and available to all developers to participate. In this instance, failure to obtain, substantiate, and retain supporting documents of the developer's ability to finance and sustain the development appears to have exposed the county to paying up to $26.6 million for the Pinnacle Infrastructure Improvement Bonds through the General Fund and the related debt service on the bonds over the next few years.

Recommendations

We recommend WCLB:

Recommendation 2010-04
In all instances, fully comply with the TURBO Program criteria and guidelines for each potential participating developer in order to ensure transparency, uniformity and consistency among prospective developers.

Recommendation 2010-05
Consider establishing a policy that requires periodic self-assessments (or independent assessments) to determine compliance with program guidelines and any findings along with a corrective action plan, be reported to the WCLB board of directors.■

Objective #2b

Determine if Key Requirements and Conditions in the Term Sheet (TS) and Development Agreement (DA) are Identical.

Conclusion

Our review of both the Term Sheet and Development Agreement revealed that most of the key requirements and conditions contained in the Term Sheet (TS) are essentially identical in form and substance to those in the DA. However, some differences in key requirements and conditions were found to exist. The differences that exist related to the level of investment and a bond loan provision in the DA that was not in the Term Sheet which the Wayne County Commission approved.

The TS was the only significant document the commission was provided regarding this development and the related resolution they approved indicated the conditions and requirements in the TS must be generally the same in the DA.

The DA also was not executed within the timeframe specified in the resolution approved by the commission for this project. These differences could call into question whether the DA is valid and whether the county's conveyance of 320 acres of land to the developer was proper.

Criteria

One of the series of documents the Wayne County Commission approved related to the Pinnacle Race Track Development project was its Term Sheet. The Term Sheet was submitted to the commission by the WCLB and EDGE officials. A Term Sheet, by definition, outlines the material terms and conditions of a business agreement. The Term Sheet for this project essentially outlined the terms and conditions that must be satisfied by the developer before the county conveyed the 320 acres of land to the Developer for $1.00.

A condition contained in the Term Sheet approved by the commission was that the related Development Agreement should be in form and substance not deviating from the Term Sheet and that it be executed within 30 days. The resolution approving the Term Sheet also required the Commission's Office of Policy Research and Analysis and Wayne County Corporation Counsel to attest that no deviations existed. Any deviations from the Term Sheet to the DA would require a subsequent resolution by the Commission.

Condition

Our analysis of both the Term Sheet and DA revealed that most of the key requirements and conditions included in the Development Agreement were generally identical to those in the Term Sheet; however, we did identify some areas where they deviated from one another. The key areas where deviations occurred were:

A. Level of investment; and
B. Provision for bond loan

Level of Investment

Regarding the level of investment, the Term Sheet required an investment of $20 million by the developer, whereas the DA indicated an investment of only $18 million. The provision for the bond loan did not appear at all in the Term Sheet approved by the commission; however, it is included in the DA the commission did not receive.

Provision for Bond Loan

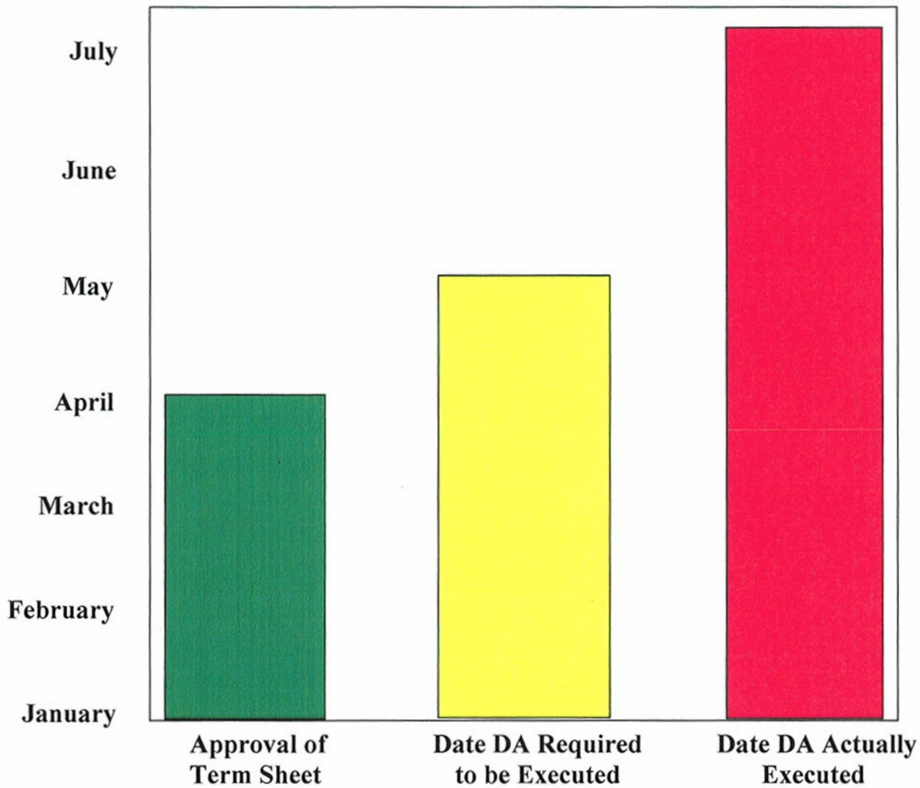
The bond loan provision in the DA would allow the WCLB, Wayne County Economic Development Corporation, or any other agreed upon public entity to provide a loan of up to $150 million to the Developer for construction, installation, etc. for the project and for the entity to issue revenue bonds to obtain monies for bond loans. However, the Term Sheet did not include an identical provision.

We believe these significant deviations in the DA from the Term Sheet would require approval of another resolution from the commission in order to comply with the resolution initially approving the Term Sheet and to ensure the DA is fully valid.

We further found the DA was not executed within 30 days of the Term Sheet's approval as required by the applicable resolution. See the graph below which depicts the relevant dates. As the graph shows, the Term Sheet was approved by the Commission on April 3, 2008; however, the DA was not fully executed until July 3, 2008, some 91 days beyond the date required in the resolution.

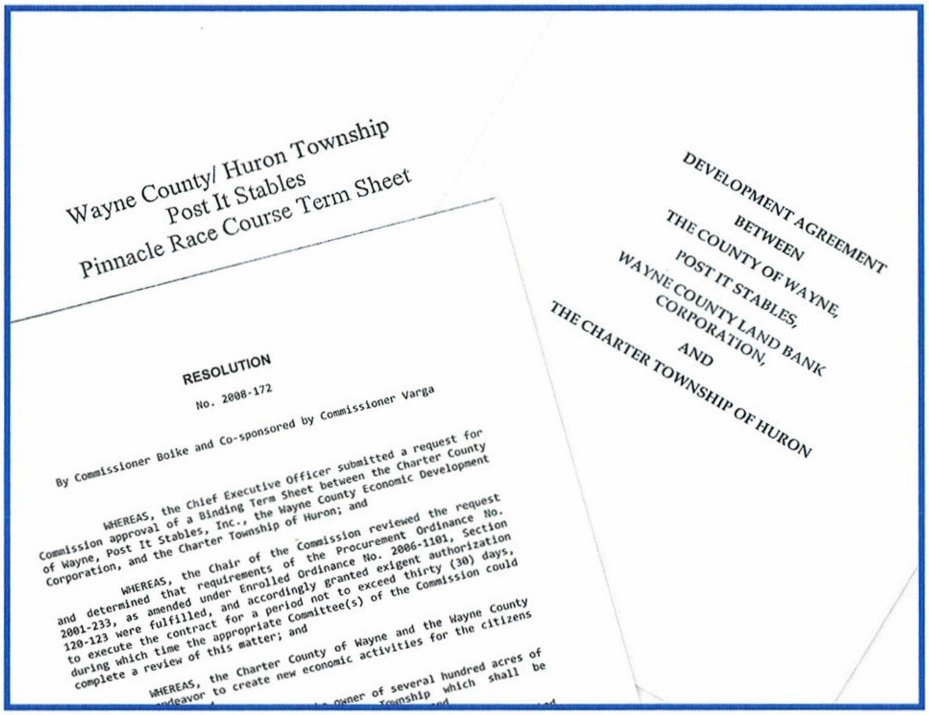
However, we noted that neither of these differences resulted in a negative impact on the project. In retrospect, management agrees that a communication to commission leadership outlining the deviations would have been appropriate.

Timeline (2008)
Execution of Development Agreement
Pinnacle Race Track Development



Cause

The WCLB and EDGE officials believe no substantial deviation from the Term Sheet to the DA exist. They further indicated the DA demonstrates that the expectations of the county exceeded the requirements listed in the Term Sheet. We disagree with that assertion. It appears these officials disregarded the requirements in the Term Sheet and related resolution approved by the commission that stated the DA must not deviate from the Term Sheet. In retrospect, the commission may have placed too much reliance on the assertions made by WCLB and EDGE officials, and failed to conduct its own independent due-diligence in this matter.



Consequences

The Term Sheet was the only significant document the commission was provided regarding this development, and the related resolution (see above) they approved indicated the conditions and requirements in the TS must be generally the same in the DA. These inconsistencies could raise legal questions as to the validity of the DA and whether the county's conveyance of 320 acres of land to the developer is in accordance with the conditions as outlined in the resolution.

Recommendations

Recommendation 2010-06

We recommend WCLB and/or EDGE develop and implement appropriate procedures and processes to ensure requirements and conditions in future development agreements reflect fully and completely, the items contained in a related Term Sheet as approved by the Commission.

Recommendation 2010-07

We recommend the Wayne County Commission consider discontinuing the practice of approving the term sheet as a comprehensive, stand-alone document for large economic development activity and instead, require the related development agreement to be approved by the commission before an agreement is reached.

Recommendation 2010-08

We recommend the Wayne County Commission consider establishing a policy defining when independent consultants should be contracted to render an opinion or assessment on significant economic development initiatives involving conveyance of county owned or controlled land in exchange for non-monetary goods or services.■

COMPARISON TO BEST PRACTICES

Objective # 3

Compare Industry Best Practices to the Project and Related Development Agreement.

Conclusion

Our comparison of race track industry best practices for public sector economic development/activity to the Pinnacle Race Track Development and its DA found the WCLB and county EDGE officials have incorporated many of the best practices cited by the Government Finance Officers Association. We did identify incidents where some key best practices were not incorporated or evident in the development or DA.

The best practices not fully incorporated or evidenced included: a sound development agreement, verified financing, sufficient monitoring, and a clawback or restricted/limited land use provision. A key objective for this development, according to a WCLB representative, was to return dormant county property to the tax rolls. Unfortunately, that objective has not been achieved, because to date, the developer has not yet paid any real property taxes; unpaid property taxes for years 2009 and 2010 total $2.24 million. Also, the developer sold a portion of the 320 acres of land the county conveyed to them for $1.00 to an Indian Tribe, which removes forever that portion of land from the County's tax rolls. Indian owned land, under federal law, is exempt from property taxes.

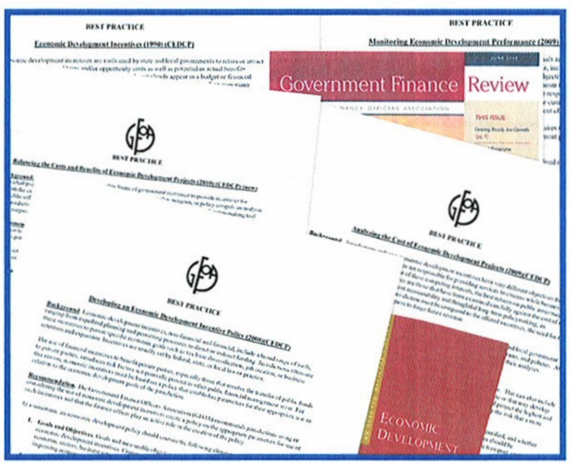
Incorporating each of the omitted best practices into the DA for this development may not have mitigated all of the losses experienced with this project, but we believe they would have been significantly reduced.

Criteria

In order to compare the Pinnacle Race Track Development and its DA to industry best practices, we obtained published information regarding best practices for public sector economic development activity from the Government Finance Officers Association (GFOA) headquartered in Chicago, Illinois. The GFOA is a highly regarded and respected professional member organization of public sector finance and accounting officials and private sector professionals who provide financial and related services to public sector entities. The GFOA has a renowned training and public policy assessment component that publishes numerous books, pamphlets and statements on best practices, including public sector economic development. We specifically reviewed the publication, *Economic Development* (An Elected Officials Guide), May 2009, (2nd printing), applicable "Best Practice."

Statements on economic development activity posted on GFOA's website, www.GFOA.org, and relevant material contained in the June 2009, Government Finance Review Journal was devoted to public sector economic development. These best practice aides listed an array of suggested policies, procedures, and actions public sector entities like Wayne County should incorporate to ensure economic development initiatives achieve the intended result and that the benefit(s) to the public are realized. Some specific best practices identified or implied are as follows:

- Importance of a Sound Development Agreement
- Importance of Selecting a Developer
- Importance of Ensuring Financing is in Place
- Monitoring Performance
- Prudent use of Economic Development Incentives
- Use of Clawback or Land Restriction Provision



Excerpts from GFOA Articles

Condition

In comparing industry best practices for economic development activity for public sector entities published by GFOA and others, it appears the county's economic development apparatus, which includes those county entities that are parties to the DA and others, have incorporated many of the best practices sited above as well as others. However, our review found that some key industry best practices were not incorporated and others were not fully in-line with best practice, or evidence of such was not present in the development's files made available to us for our review.

Some of the areas of industry best practices are beyond the scope of this engagement (i.e. importance of selecting a developer), and as such we have not focused on them. However, we believe others fall within the scope of our review and thus, we have focused on those. These would include: importance of sound development agreement, importance of ensuring financing is in place, monitoring of proper performance, and a clawback or restricted/limited land use provision(s).

Sound Development Agreement

It is an industry best practice to have an executed development agreement for every economic development project undertaken, and the Pinnacle Race Track Development clearly had one. However, was it as sound as it could have been to protect the county's interest and ensure key benefits intended from the development are achieved and realized for the citizens of Wayne County? We believe the answer is no because the DA failed to sufficiently incorporate provisions or clauses that would require: (1) evidence of the County's review of job creation report and its retention (allowing it to be independently corroborated); (2) evidence developer secured sufficient financing; (3) incremental reporting/ monitoring be formalized and documented; and, (4) an appropriate clawback or a restricted limited land use provision.

Verified Financing

The Term Sheet and DA associated with this development discussed financing for the development and options the developer may pursue to arrange financing necessary to ensure the development could occur financially. The DA also required the developer to provide proof of financing prior to the county allowing the developer to proceed with development activity on county owned land. Moreover, as noted previously in this report, our review of the development's files did not reveal any support (i.e. letter of credit, letters of financing commitment or certified developer's net worth statements) that the developer had the financial assets to bring the development to fruition. Industry best practices in this area strongly recommend evidence of sufficient and reliable financing be substantiated prior to allowing development activity to begin.

Specifically, the Term Sheet stated "...the developer intends to borrow up to $20 million from Comerica Bank..." Conversely, the DA provided even less comfort; it stated "...Post It Stables, Inc. should use its best efforts to obtain one or more loans..." We spoke to WCLB representatives about the lack of adequate financing being required and evidence of such not being in the development's file. They stated the developer was using its own private funds, implying a letter of credit or other evidence of financing was not needed. Because the developer switched from debt financing to private financing is even more reason to obtain independent verification of their ability to finance the development and it be available for review and verification, if requested. Having such evidence on file would greatly enhance transparency and accountability.

Monitoring of Development

Another industry best practice would be monitoring to ensure every key aspect regarding the requirements and conditions surrounding the development project are progressing toward satisfactory completion, especially those tied to incentives provided by a public sector entity, like Wayne County. Monitoring of this nature would ensure economic development goals and objectives are achieved. Our review of the relevant files related to the race track development, that were made available to us, failed to contain any uniform or systematic reports or memoranda detailing the progress of the project while the development was underway.

The DA itself merely required that a report be provided to the county from the developer itself indicating it had satisfied the conditions and requirements allowing for the conveyance of the 320 acres of land for the price of $1.00. When we shared our concern with a representative of WCLB regarding the lack of evidence that appropriate and sufficient monitoring of the project occurred while it was in progress, they indicated extensive on-site monitoring observations did take place by the project manager. The representative also cited the numerous permits required from the state and the local unit of government as evidence of compliance. However, compliance with requirements for building and other permits does not constitute monitoring in the sense intended in the best practices statement issued by GFOA. The permits do not seek to mitigate or manage risk for the county, they seek to serve or address health and safety matters.

We also found that WCLB failed to have organizational-wide policies and procedures that require specific monitoring and evidence of same for every development separate from what any specific development agreement required. The GFOA's best practice statement refers to this type of monitoring as macro. Macro-monitoring would also include policies and procedures to measure the performance of economic development activity by program or incentive type offered, and certainly, monitoring of the entity's chief and primary goal(s).

At the onset of this engagement, WCLB officials and their representatives expressed to us that the number one priority for WCLB and EDGE was to return vacant and dormant property to the tax rolls. However, WCLB does not have a policy that requires project managers or others to monitor developments and projects to ensure, when applicable, conveyed land is properly returned to the tax rolls and personal and real estate taxes are paid. In this instance, payment of property taxes by the developer was critical to the county since a portion was to be used to make payments on the outstanding infrastructure improvement bonds issued for water, sewerage, and road improvement for the benefit of this and other developments on this tract of land.

Clawback Provision

A clawback provision "allows a government to recover all or a portion of the costs of its incentives or subsidiaries if a developer fails to produce the promised benefits." Clawback provisions are a highly recommended best practice for public sector entities like Wayne County who use incentives, subsidiaries, and other tools to encourage businesses to locate or remain in the county. The DA did not contain a clawback provision that would allow the county to recover the conveyed land and its administrative costs if the developer failed to fulfill each requirement and condition regarding conveyance of the 320 acres of land for a single $1.00. Moreover, the WCLB does not have a policy or procedure requiring a clawback or restricted/limited land use provision be considered for inclusion in each development agreement they are a party to.

When we shared our concerns about the omission of this provision in the DA or it not being required to be considered as a WCLB policy, the WCLB attorney indicated clawback provisions exist pursuant to the State of Michigan statutes. He cited the state's Industrial Facilities Act, and that it is available if certain tax incentives to corporations (developer) are awarded and they do not fulfill conditions or requirements for which they received incentives. He further indicated that only the state could enforce the clawback provision and only when related to tax incentives. Lastly, he indicated the state provision was not applicable since tax incentives were not provided to the developer for this project.

The analysis of the state's clawback provision, as explained by the WCLB representative, supports the need for such a provision in future DAs since the county's toolbox of incentives go beyond merely tax incentives. The attorney further indicated WCLB and Wayne County Economic Development officials considered another measure to protect the county's interest in this development, a "right of re-entry" clause within the property deed. This right, according to the representative, allows the prior owner to trigger an optional conveyance based on the nature of the right. However, he stated such a provision was not acceptable to the developer, and had it been included, the developer would have terminated any agreement with the county.

Cause

We are not exactly sure why WCLB and other county economic development officials failed to incorporate the numerous public sector economic development best practices identified into the DA or otherwise for this particular development. But, on more than one occasion, the representative from WCLB indicated they believed this development was a success; therefore, logically they may not believe the best practices identified herein were necessary. However, a plausible cause may be pressure the county's economic development officials may have felt regarding the need to have a major economic development project on the Aeropark tract of dormant land. As such, they may have simply failed to incorporate some basic safeguards that would have increased the chances of this project being successful.

Consequences

Failure to expeditiously incorporate industry best practices for public sector economic development activity increases the possibility that intended economic development benefits for the community may not be achieved or sustained. This was exacly what occurred for the Pinnalce Race Track Development. Officials and representatives from both WCLB and EDGE indicated a primary objective for their organization and this specific project was to return dormant county owned property to the tax rolls. The 320 acres of land the county sold to the devleoper for a single $1.00, with its agreement to create a specific quantity and amount of jobs and investment, respectively, if achieved, was certainly not sustained. We recognize had the

WCLB and EDGE incorporated all of the best practices identified herein, the development still may not have been sustainable because of the region's depression-like economic conditions; however, we believe the losses to the county may have been far less. At the date of this report, the developer of the project never paid county or local real estate property taxes. A recent newspaper article stated real property taxes for years 2009 and 2010 in the amount of $2.24 million were owed, (plus interest) that is accruing daily.

The county is also burdened with the entire infrastructure improvement bonds repayment related to this tract of land in the amount of $26.6 million, including principal and interest. Payments on these bonds average about $880,000 per year with an interest rate ranging from 4.5 to 5.7% and are backed by the credit and good faith of the county.

Moreover, in August 2010 it was reported in the media that the race track developer sold an estimated 6.6 acres of the conveyed land to the Sault Saint Marie Tribe of Chippewa Indians for $179,000. This portion of land is exempt forever from paying property taxes to the county or the Township of Huron.

Recommendation

Recommendation 2010-09

We recommend WCLB and EDGE undertake a comprehensive review to assess their current policies, procedures, and practices related to development agreements and other aspects of public sector economic development activity and incorporate the best practices into their processes, in order to enhance uniformity, transparency, and efficiency and reduce the potential loss of County assets and resources.■

SUBSEQUENT EVENTS

Professional auditing standards require auditors to disclose events that occurred after the completion of their fieldwork but before issuing a report that may have a material impact on the facts and conclusion being reported on. Numerous events have occurred related to this report and its subject matter and the sustainability of the development itself. Specifically, events have occurred during and subsequent to completion of our fieldwork that we believe are of significant importance to the Pinnacle Race Track Development. Many of the troubling events have been printed and televised about the sale of the land, discontinuation of operations, and surrendering of race licenses (following are excerpts from newspaper articles). Either separately or collectively, these reported events do not bode well for the development and its ability to fulfill the promises of thoroughbred horse racing as a catalyst to spur economic development in the Pinnacle Aeropark tract of land.

Find below a chronological listing of events and occurrences as reported in various media articles that impact this development and its ability to achieve its intended goals and objectives.

Recent Media Articles

Pinnacle Race Track

Date (MM/YY)	Description of Media Report(s)
4/10	Developer sells/sold approximately 7 acres of land to Indian Tribe.
8/10	Questions regarding whether all 320 acres or 7 acres of land were sold to the Sault Saint Marie Tribe of Chippewa Indians.
8/10	Pinnacle Race Track failed to pay 2009 and 2010 property taxes.
8/10	Developer files property tax complaint with the Michigan Tax Tribunal (done before tax bill was even sent).
9/10	Pinnacle's $33,000 water bill is paid by Michigan's Horseman's Benevolent and Protection Association.

Recent Media Articles

Pinnacle Race Track

(Continued)

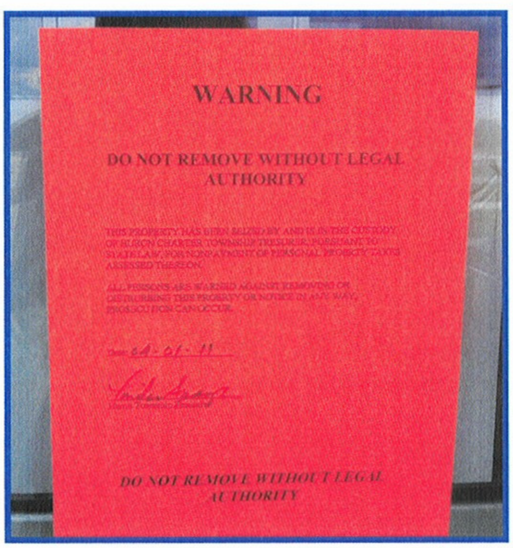
<u>Date (MM/YY)</u> **<u>Description of Media Report(s)</u>**

11/10 Pinnacle Race Track suspends simulcasting and closed before the season ended.

1/11 Romulus City Officials have not been contacted regarding rumored casino on land conveyed to developer.

1/11 Huron Township Officials working to determine Pinnacle's unpaid taxes owed. Sign on property reads "Entering Indian Lands of the Sault Saint Marie Tribe of Chippewa Indians. All Sault Tribes reservations laws strictly enforced."

5/11 Huron Township post notice on Pinnacle pavilion entrance "This property seized by Huron Township."



VIEWS OF RESPONSIBLE OFFICIALS

Views of Responsible Officials can be found in appendix A.

OAG OVERALL CONCLUSION

Determine if Developer Created the 1,100 Construction Employment Jobs and 1,200 New FTE Employment Positions.

Due to a lack of management's ability to provide adequate supporting documentation, we were unable to determine if the developer met the conditions as agreed upon in the Development Agreement in order to transfer the 320 acres of county land to them. In addition, the methodology used by the developer to account for job creation was questionable and we do not believe it met the intent and spirit of the Development Agreement. However, since Land Bank officials did not challenge the methodology used within the time allowed in the Development Agreement, there does not appear to be a legal recourse provision in the agreement to nullify the land transfer.

Determine Whether Project Met Requirements for Participation in TURBO Program.

We determined the project did not meet the requirements to participate in the TURBO program. Although our audit evidence indicates this project was being promoted as a TURBO project, management contends it was never intended to participate in the TURBO program. Since real property taxes were never paid, this project did not benefit from any special TURBO tax incentives.

Determine if Key Requirements and Conditions in the Term Sheet and Development Agreement (DA) are identical.

We determined the Term Sheet and the Development Agreement, in certain instances, did not mirror each other as stipulated in the resolution approved by the commission. The differences were primarily related to the level of investment and a bond loan provision in the Development Agreement. Specifically, the Term Sheet required an investment of $20 million while the Development Agreement required an investment of $18 million. Further, there was a provision for the county to loan the developer up to $150 million for construction and installation costs added to the Development Agreement which was not approved in the Term Sheet. However, we noted the developer invested more than $30 million into the project and the county did not loan the developer any monies for construction and installation cost.

Compare Industry Best Practices to the Project and Related Development Agreement.

We have concluded that management needs to assess their current policies and procedures related to economic development activities and incorporate best practices into their processes.

A corrective action plan will be requested approximately 30 days after this report is formally received by the Wayne County Commission. If sufficient corrective action is not taken, a follow up review may be necessary.

This report is intended solely for the information and use of the Wayne County Land Bank and the Wayne County Commission and is not intended to be and should not be used by another other than these specified parties. This restriction is not intended to limit the distribution of the report, which is a matter of public record.

Sincerely,

Willie Mayo, CPA, CIA, CICA
Auditor General

APPENDIX A

VIEWS FROM RESPONSIBLE OFFICIALS AND OAG'S RESPONSES

Robert A. Ficano
County Executive

July 7, 2011

Mr. Willie Mayo
Auditor General
500 Griswold, 8th Floor
Detroit, MI 48226

Dear Mr. Mayo,

A key priority of the Executive Branch is to provide strong governance to the people of Wayne County which includes responsible management of its fiscal resources. Not only has that resulted in the enactment of a Transparency page on the County's website, but has also meant the passage of many financial policies that provides for a new era of accountability for all employees.

Since County Executive Robert Ficano took office, he has introduced initiatives that have restored the County's fiscal integrity and brought enhanced accountability to public sector management. Of utmost importance to our government is providing assurance to citizens that our management of public dollars is sound. We will continue to make significant strides on our path to making government more responsible, transparent and accountable to the people we serve.

With that background in mind, we have reviewed the attestation/assurance report for the Pinnacle Race Track Development and although the report made a couple of good recommendations, we have a concern about others. Our views are attached to this transmittal letter and should be incorporated in the final report.

Sincerely,

Carla E. Sledge
Chief Financial Officer

Attachment

DEPARTMENT OF MANAGEMENT AND BUDGET
500 GRISWOLD • DETROIT, MICHIGAN 48226 • (313) 224-7766 • www.waynecounty.com

Recommendation 2010-01

Develop appropriate internal controls, processes and monitored mechanisms including checklist to ensure each and every requirement or condition within a development agreement are met or achieved.

Views from responsible officials:

A jobs report was provided by Post It Stables. This report was compiled by the developer, but the reporting came from each vendor involved in the project. These vendors interpreted and provided information in an inconsistent manner. Respectfully, providing information in an inconsistent manner is not evidence that jobs were not created. It is evidence that reporting is done in an inconsistent manner.

We agree with the Auditor that a jobs report provided in a consistent format is a benefit to Wayne County. We do not believe that the lack of a consistent format is evidence that jobs were not created. Nevertheless, we will take on the responsibility of implementing a single format for job creation/reporting and checklist. These forms will be created by October 1, 2011. The Economic Development Growth Engine Department will be the entity responsible for creating this form.

OAG Response:

Inconsistencies - Although uniformity and consistency are both important, we only make a passing reference to inconsistencies in the report; on page 11 of the Pinnacle report, there is mentioned the hap-hazard, non-uniform manner in which the vendors provided the jobs information required by the development agreement. However, the inconsistencies in job reporting were not the cause of the OAG inability to attest to the jobs being created. It was due to a lack of record retention and the methodology used to account for the jobs being created.

For example, on page 10 of our report, WCLB personnel stated records were not available to substantiate the certified jobs report provided by the developer.

Page 11 of our report identifies troubling methodology used to compute jobs created. For example, statements from the general contractor read: “Include everyone – even if the maintenance company sent a different mechanic to repair equipment five different times that company would have a total of five people involved with the project….”

Therefore, we believe management’s views fail to acknowledge the shortcomings pertaining to record retention and the methodology used in accounting for jobs created. The development agreement defined what was to be counted as an FTE and the information to be provided in the jobs report. WCLB simply failed to require the developer to fully comply with the specifications as outlined in the development agreement.

Recommendation 2010-02

Develop a policy and procedure that requires evidence or documentation related to verifying that requirements or conditions in development agreements be filed and maintained for a reasonable period of time after the related project is considered complete.

OAG Response:

Management stated they agree with this recommendation. Refer to response in 2010-01.

Recommendation 2010-03

Consider development of a policy and procedure to require verification of requirements and conditions contained in Development Agreements requirements and conditions be performed by an independent party other than the WCLB, the developer or county attorney.

Views from responsible officials:

Management does not see the value add for this recommendation. The County has capable employees on staff that can perform the necessary verification contained in Development Agreements.

OAG Response:

Management disagrees with this recommendation. However, we believe when the amount of the investment is significant that added value can be derived by an independent review by a third party.

Recommendation 2010-04

In all instances, fully comply with the TURBO Program criteria and guidelines for each potential participating developer.

Views from responsible officials:

We agree this development did not meet the requirements as there was no application or TURBO Development Agreement executed. Thus it was not a TURBO Development.

Management has provided documents showing that this development was not a TURBO Development. In order to characterize a development as a TURBO Development, three things must exist.

1. The Developer must complete an application making a request for such a benefit and receive the permission of the local municipality.
2. If awarded a TURBO benefit, a TURBO Development Agreement is executed.

3. The Developer will be provided with a TURBO benefit which equates to reimbursement of development expenses over five years.

We agree with the Auditor that there is an absence of these three conditions. Neither the Land Bank, nor the County intended to provide the Developer with a TURBO benefit. Moreover, the Developer never received a TURBO benefit.

OAG Response:

We agree that no tax benefits were derived; however, it still does not negate the fact this project was listed in several instances as possibly being eligible for TURBO benefits. Consequently, we believe WCLB afforded a window of opportunity for the project to participate in the program by listing it in numerous reports as a TURBO program.

The OAG recommendations 2010–04 and 2010–05 attempt to outline the criteria as to how future development projects should be identified and communicated to others, as well as the establishment of self- assessment monitoring.

Recommendation 2010-05

Consider establishing a policy that requires periodic self-assessments (or independent assessments) to determine compliance with program guidelines and any findings, along with a corrective plan, be reported to the WCLB board of directors.

Views from responsible officials:

Refer to response in 2010-01.

OAG Response:

Management agrees with this recommendation. Refer to response to 2010-01.

Recommendation 2010-06

Consider establishing a policy that requires periodic self-assessments (or independent assessments) to determine compliance with program guidelines and any findings, along with a corrective plan, be reported to the WCLB board of directors.

Views from responsible officials:

Refer to response in 2010-01.

OAG Response:

Management agrees with this recommendation. Refer to response to 2010-01.

Recommendation 2010-06

We recommend WCLB and/or EDGE Develop and implement appropriate procedures and processes to ensure requirements and conditions in future Development Agreements reflect fully and completely items contained in a related Term Sheet.

Views from responsible officials:

There are provisions in the Term Sheet and the Development Agreement which address whether the EDC or some other public entity will provide bonding for the project. This is in Section 15 of the Term Sheet and Section 4.12 of the Development Agreement. Both sections are consistent in stating that these must be "revenue bonds" backed by the credit of the Developer.

An EDC bond does not require the approval of the Wayne County Commission or the Wayne County Executive. This type of bond is solely based on the credit of the borrower or the Developer. First, there is no statement within the Term Sheet or the Development Agreement where the County offers to provide financing for the development. There is a reference to the Developer's desire to utilize EDC bonds in both agreements. We believe it is misleading to misconstrue these provisions as substantially deviating from one another.

OAG Response:

Comparison of Term Sheet to Development Agreement - there are two areas where the two documents did not agree: the level of investment, and the provision for a bond loan.

The term Sheet required an investment of $20 million by the developer where the development agreement states an investment of $18 million before the land could be conveyed to the developer.

The provision for the revenue bond loan did not appear in the Term Sheet approved by the commission; however, it is included in the development agreement. It is true the bond loan is based on the credit of the developer but it still does not negate the fact that there existed a difference between the two documents.

Our report is stating the understanding and agreement reached by the commission and management were not fully complied with and we offer three recommendations for consideration to mitigate this risk in the future.

We understand these are two complex documents and our objective for this engagement was not to opine on the importance of the deviations between the two legal documents but to merely point out inconsistencies did exist.

Recommendation 2010-07

We recommend the Wayne County Commission consider discontinuing approval of Term Sheets alone as it relates to significant economic development activity and require related Development Agreements to come before the body for ultimate approval prior to any actions being performed.

Views from responsible officials:

We disagree with this recommendation. If the development agreement deviates substantially from the term sheet originally approved, management will report back to the Commission.

OAG Response:

Management disagrees with this recommendation. However, we believe to enhance oversight and mitigate the risk in the future, the commission should discontinue the practice of signing term sheets. Otherwise, there is no control to guarantee that management will report back to the commission when there are deviations between the development agreement and the term sheet.

Recommendation 2010-08

We recommend the Wayne County Commission consider establishing a policy defining when independent consultants should be contracted to render an opinion or assessment on significant economic development initiatives involving conveyance of county owned or control transaction that are not at market-value.

Views from responsible officials:

We disagree due diligence on such projects is conducted by the administration and presumably by the commission when it undertakes review and approval of a development agreement. Again, we do not see a value - add for this recommendation. Spending unnecessary dollars on more consultants is not something the County needs, particularly when there are real estate employees on staff that do the necessary investigation, work up and render opinions when required.

OAG Response:

Management disagrees with this recommendation. However, we believe the commission cannot solely rely on management when the amount of an investment is significant and the decision makers have limited experience with the subject matter being considered. The success of this investment required expert knowledge pertaining to the race horse industry, in addition to how to structure a real estate transaction.

An independent assessment is sometimes necessary to demonstrate the decision makers are exercising due diligence and assurance and are making a sound investment based on an independent opinion from experts in the industry.

Recommendation 2010-09

We recommend WCLB and EDGE undertake a comprehensive review to assess their current policies, procedures and practices related to development agreements and other aspects of public section economic development activity and incorporate the best practices into their processes in order to enhance uniformity, transparency and efficiency.

Views from responsible officials:

We agree WCLB, EDGE and all departments should periodically review current policies and procedures for changes, audit those procedures on a regular basis and advise the affected groups of the policy/procedure changes.

OAG Response:

Management agrees with this recommendation.