

**STATE BOARD OF ACCOUNTS**  
**302 West Washington Street**  
**Room E418**  
**INDIANAPOLIS, INDIANA 46204-2769**

AUDIT REPORT  
OF  
COLUMBUS REDEVELOPMENT COMMISSION  
CITY OF COLUMBUS  
January 1, 2011 to December 31, 2011



**FILED**  
11/21/2012



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CITY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Redevelopment Commission Director	Ed Curtin	01-01-11 to 01-31-12
	(Vacant)	02-01-12 to 08-12-12
	Heather Pope	08-13-12 to 12-31-12
President of the Redevelopment Commission	Tom Vujovich	01-01-11 to 06-06-11
	(Vacant)	06-07-11 to 06-29-11
	Rich Stenner	06-30-11 to 12-31-11
	Kristen Brown	01-01-12 to 12-31-12
Clerk-Treasurer	Brenda Sullivan	01-01-08 to 12-31-11
	Luann Welmer	01-01-12 to 12-31-15
Mayor	Fred L. Armstrong	01-01-08 to 12-31-11
	Kristen Brown	01-01-12 to 12-31-15
President of the Board of Public Works and Safety	Fred L. Armstrong	01-01-11 to 12-31-11
	Kristen Brown	01-01-12 to 12-31-12
President of the Common Council	Jesse Brand	01-01-11 to 12-31-11
	James Lienhoop	01-01-12 to 12-31-12



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TO: THE OFFICIALS OF THE CITY OF COLUMBUS

We have audited the records of the Columbus Redevelopment Commission, City of Columbus, for the period from January 1, 2011 to December 31, 2011, and certify that the records and accountability for cash and other assets are satisfactory to the best of our knowledge and belief, except as stated in the Audit Results and Comments. The financial transactions of this office are reflected in the Annual Report of the City of Columbus for the year 2011.

STATE BOARD OF ACCOUNTS

October 3, 2012

COLUMBUS REDEVELOPMENT COMMISSION  
CITY OF COLUMBUS  
AUDIT RESULTS AND COMMENTS

**COLUMBUS DOWNTOWN, INC.**

During 2011, the Columbus Redevelopment Commission (CRC) approved payments to Columbus Downtown, Inc., (CDI) as detailed in the following schedule:

Date of Payment	Promissory Note & Grant Agreement Descriptions	Amount of Payment	Source of Funding	Additional information
07-19-11	Promissory note: "(1) build out of tenant improvements at the Commons . . . and (2) build out of the IU Center for Arts & Design . . ."  Grant agreement with CDI for \$633,000: build-out of the space allocated for the retail spaces in The Commons"	\$ 133,000	Cummins Foundation loan of \$500,000	Promissory note – CRC is to make repayments in the amount of \$125,000 per year from 2013 to 2016;
07-19-11	(1) build out of tenant improvements at the Commons . . . and (2) build out of the IU Center for Arts & Design . . ."  Grant agreement with CDI for \$633,000: build-out of the space allocated for the retail spaces in The Commons"	\$ 500,000	Heritage Fund loan of \$500,000	Promissory note – CRC is to make repayments in the amount of \$125,000 per year from 2013 to 2016;
12-29-11	Grant agreement – "repayment of loans for money that was used for downtown redevelopment and acquisition of real estate for future downtown development, namely:  1) Irwin Financial Foundation Inc. - \$25,000 2) Heritage Fund, Inc. - \$225,000 3) Cummins Foundation, Inc. - \$250,000 4) Bartholomew County REMC - \$365,000"	\$ 865,000	TIF funding	Promissory notes – Irwin Financial Founda \$25,000 Heritage Fund, Inc. \$225,000; Cummins Foundation \$250,000; Mortgage: Bartholomew County REMC \$365,000

The CRC also approved payments of \$200,000 and \$300,000 to the Irwin-Sweeney-Miller Foundation, for the build-out of the space allocated for the Indiana University Center for Art and Design in space in the former Commons retail building. This building is not owned by the City of Columbus. The source of these funds was \$200,000 from the CEDIT Fund, which was later reimbursed from the TIF Fund; and a portion of the above noted Cummins Foundation loan of \$500,000.

Columbus Downtown, Inc., (CDI) was formed March 14, 2008, as a nonprofit corporation. Per the Articles of Incorporation, CDI is a "public benefit corporation that shall be organized and operated exclusively to benefit, perform and carry out the charitable, educational, and other public purposes of the City of Columbus, Indiana (the City)." In accordance with Article VII of the Articles of Incorporation, the board of directors of CDI "shall be comprised of three (3) members, appointed as follows: (1) one appointed by the Mayor of the City, (2) one appointed by the Common Council of the City, and (3) one appointed by the City of Columbus Redevelopment Commission.

On June 6, 2011, the Columbus Redevelopment Commission approved a grant agreement with Columbus Downtown, Inc., in the amount of \$633,000 for the "build-out of the space allocated for the retail spaces in The Commons". As a part of this grant agreement, "This grant requires the Grantee to give periodic

COLUMBUS REDEVELOPMENT COMMISSION  
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AUDIT RESULTS AND COMMENTS  
(Continued)

reports, no more than sixty (60) day intervals, to the City of Columbus Redevelopment Commission explaining how the funds are being expended and that said funds are only expended for build-out of the designated space. After all funds have been expended a final report shall be issued by the Grantee to the Commission. No funds shall be transferred to the Grantee until the Grant Agreement is executed."

The Commons building is owned by the City of Columbus.

The Redevelopment Commission minutes for June 6, 2011, stated in part "7) Grant Agreement with Columbus Downtown Inc., for the white box buildout of tenant space in the Commons – This is to provide \$633,000 to CDI for buildout of both the restaurant and food court space. This space totals about 10,000 square feet. The buildout includes water, electricity, and sewer along with framing, dry walling, and painting the walls white. The space lessee's pay for their own fixtures and decorations."

The Redevelopment Commission minutes for September 12, 2011, stated in part: "9) Build out of Commons Retail – The construction of the two restaurants are moving along well. Both restaurants will be open on October 15, 2011. The total cost of this project was \$633,000. Cummins and Heritage Fund each provided a grant of \$500,000 with the remaining \$133,000 coming from TIF proceeds."

There was no other information presented in the Redevelopment Commission minutes to document that CDI gave periodic reports which explained how the funds were being expended and that said funds were only expended for build-out of the designated space. No evidence was presented of a final report being issued by CDI for the Redevelopment Commission.

As noted above from the RDC minutes of June 6, 2011, concerning the tenants in the Commons: "The space lessee's pay for their own fixtures and decorations." We noted that \$9,750 was paid from the Economic Development Income Tax (CEDIT) fund for "proprietary (proprietary) logo artwork" for the Puccini's restaurant in the new Commons building.

Indiana Code 36-7-14-39(b)(3) establishes the purposes for which TIF funds may be used. While Indiana Code 36-7-14-39(b)(3)(J) does allow for TIF funds to be used "to pay expenses incurred by the redevelopment commission for local public improvements . . .", there is no stated purpose which would allow TIF funds to be granted to a not-for-profit corporation.

Indiana Code 36-7-14-12.2(a) includes a few passages that empower a redevelopment commission to make improvements to structures. And, as noted above, Indiana Code 36-7-14-39(b)(3)(J) provides that TIF funds may be used to pay those expenses. Entering into a grant agreement with a not-for-profit corporation, whereby the not-for-profit corporation is to contract for construction work on a public structure, does not appear to be allowed within Indiana Code 36-7-14.

Had amounts been expended by the redevelopment commission, as allowed within the statutes, rather than granted to and expended by CDI, officials would have been required to follow statutory processes and procedures in place for the bidding of public works projects.

Prior to its amendment in the 2012 legislative session, Indiana Code 36-1-12-4(a), Version a, stated in part:

"This section applies whenever the cost of a public work project will be:

(1) at least seventy-five thousand dollars (\$75,000) in:

(A) a consolidated city or second class city;

COLUMBUS REDEVELOPMENT COMMISSION  
CITY OF COLUMBUS  
AUDIT RESULTS AND COMMENTS  
(Continued)

- (B) a county containing a consolidated city or second class city; or
  - (C) a regional water or sewage district established under IC 13-26; or
- (2) at least fifty thousand dollars (\$50,000) in a political subdivision or an agency not described in subdivision (1).
- (b) The board must comply with the following procedure:
    - (1) The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. If the project involves the resurfacing (as defined by IC 8-14-2-1) of a road, street, or bridge, the specifications must show how the weight or volume of the materials will be accurately measured and verified.
    - (2) The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required by subdivision (3).
    - (3) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed."

***OBLIGATION OF CITY FUNDS BY COLUMBUS DOWNTOWN, INC.***

The "Second Street Downtown Columbus Memorandum of Understanding" (MOU) between Buckingham Cole, LLC, and Columbus Downtown, Inc., (CDI) was dated September 2, 2009. The Memorandum states in part: "Article VII Closing, Section 7.02. CDI's Closing Obligation. At the Closing, CDI shall undertake, or cause to be undertaken, the following . . . (f) The City shall remit \$300,000.00, when available, but in no event later than eighteen (18) months from the date of this Agreement to offset the cost of the Project, remitted pursuant to statutory authority. . . ."

This MOU was signed by Buckingham Cole, LLC; and CDI, by John Burnett.

Per the Redevelopment Commission minutes of July 12, 2010, "5) TIF Commitment Resolution — This is for housing project called The Cole. It is a mixed use with 146 1-2 bedroom apartments with 9,000 sq ft of retail space on the first floor. The project is looking to start construction late summer/early fall 2010. City Council approved the first reading 6-1 of the Economic Development Bonds. The TIF commitment is the last puzzle piece to get financing. Without it the project would not move forward. The Cole would be owned by Buckingham. Columbus is not providing any funds to this project."

Based on discussions with current City officials and our review of City expenditures, no payment by the City to Buckingham Cole, LLC., had been made as of October 3, 2012.

COLUMBUS REDEVELOPMENT COMMISSION  
CITY OF COLUMBUS  
AUDIT RESULTS AND COMMENTS  
(Continued)

***AIRPORT LAND AND REMC PROJECT***

During the review of the 2011 Columbus Redevelopment Commission board minutes, it was determined that there had been a sale of airport real property in a prior year for which a promissory note existed. The Promissory note was dated March 6, 2009, and states in part, "On or before May 1st, 2012, for value received, the undersigned promises to pay to the order of the Board of Aviation Commissioners of Columbus, Indiana the sum of three hundred sixty seven thousand five hundred dollars and no cents (\$367,500.00), at the Columbus Municipal Airport, . . . . This note, and any extensions or renewals hereof, shall be secured by a first lien Mortgage of Real Property located in the City of Columbus, Indiana to be executed by the Columbus Redevelopment Commission within 90 days of this note pursuant to the Agreement for Inter-Governmental Transfer of Real Property executed by the Board of Aviation Commissioners of Columbus, Indiana and the Columbus, Indiana Redevelopment Commission."

A review of the property records at the Bartholomew County Recorder's office disclosed the following:

- A warranty deed dated March 25, 2009 between the Columbus Board of Aviation Commissioners to the City of Columbus, Department of Redevelopment for the Board of Aviation/Deaver Road property;
- A Corporate Warranty Deed dated May 7, 2010 from the City of Columbus, Department of Redevelopment to the Columbus Downtown Inc. for the Board of Aviation/Deaver Road property.
- A Corporate Warranty Deed dated May 7th, 2010, from the Columbus Downtown, Inc., to the Bartholomew County Rural Electric Membership Corporation (REMC) for the Board of Aviation/Deaver Road property.
- A Corporate Warranty Deed dated May 3, 2010, from the REMC to Columbus Downtown Inc., for the REMC 2nd Street property.

The Board of Aviation/Deaver Road property was transferred to the Columbus Redevelopment Commission for \$367,500, with a promissory note to be secured by a first lien mortgage.

In accordance with Indiana Code 36-4-6-15, "The legislative body may pass ordinances, orders, resolutions, and motions for the government of the city, the control of the city's property and finances, and the appropriation of money."

There is no indication that the Columbus City Council acted in any way to authorize the transference of property from the control of the Board of Aviation Commissioners to the control of the Redevelopment Commission.

Indiana Code (IC) 8-22-2-8 establishes the process by which a board of aviation commissioners may dispose of land. Indiana Code 8-22-2-8(a) states: "If the board wishes to sell part or the whole of the aviation land or improvements owned by the eligible entity, it may prepare an ordinance authorizing the sale and submit it to the fiscal body of the entity. If the fiscal body passes the ordinance, the land or improvements shall be sold as other lands or improvements of the entity are sold, and the proceeds of the sale shall be deposited in the aviation fund of the entity."

There is no indication that the Columbus City Council passed an ordinance authorizing the sale of land.

COLUMBUS REDEVELOPMENT COMMISSION  
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Also observed was a copy of a mortgage dated May 3, 2010, where Columbus Downtown Inc., "mortgages and warrants to Bartholomew County Rural Electric Membership Corporation the real estate known as 801 Second Street . . . to secure the repayment of \$365,000.00." The payoff of this mortgage was made by CDI to REMC on December 30, 2011.

There was no copy of the first Lien Mortgage of Real Property document for the former BOA/Deaver Road property presented for audit; nor was there any determination as to the resolution of the referenced Mortgage, in relation to the above real estate transactions. Based on information from the Bartholomew County Recorder's office, there was no evidence that the Mortgage had been recorded.

As of August 8, 2012, no payment had been made by the Columbus Redevelopment Commission to the Columbus Board of Aviation. However, based on conversations with the former Airport Director, a Project Agreement had been approved between the Columbus Board of Aviation Commissioners and the City of Columbus Redevelopment Commission. It was the former Airport Director's understanding that this Project Agreement was to compensate the Board of Aviation for the sale of the BOA/Deaver Road land; however, the Project Agreement did not contain any reference to the sale of the land.

A copy of the Project Agreement between the Columbus Board of Aviation Commissioners and the City of Columbus Redevelopment Commission was presented for audit; Exhibit A of this agreement was a list of possible Airport projects compiled by the former Airport Director. A review of the Redevelopment Commission minutes disclosed that this agreement, which the minutes showed was for \$367,500, was approved on December 12, 2011.

The agreement states in part: "4. FINANCIAL COMMITMENT: Pursuant to Indiana Code Section 36-7-14-12.2(a)(21), the Commission agrees to and does hereby pledge and commit to transfer to the Board an amount of \$\_\_\_\_\_ ("Committed Funds") of the available allocated tax revenues in the allocation fund (the "Airport Allocation Fund") established and existing related to the Allocation Area ("Funds"). Such Committed Funds shall be paid over to the Board in a single installment to be distributed to the Board on or before December 31, 2011 (the "Distribution Date"). The Board agrees to expend the Committed Funds for the Improvements in a manner that benefits the Allocation Area and mutually furthers the respective Redevelopment Purposes and Airport Purposes."

***DISSOLUTION OF COLUMBUS DOWNTOWN, INC.***

In 2012, the current CDI board transferred the properties that were owned by CDI to the Columbus Redevelopment Commission. CDI has also transferred the control of the leases for the two downtown parking garages and the two Jackson Street restaurants to the CRC. The Columbus Parks and Recreation Department is managing these properties as a subcontractor for CRC.

Columbus Redevelopment Commission has also been approved, through Resolution of the Commons Board, to become manager of the four Commons restaurant leases, once all non-assignability clauses are signed by all tenants. Three out of the four restaurant tenants have waived their respective assignability clauses. If the last tenant waives the non-assignability clause so the lease can be transferred to CRC, CDI will no longer have management over the four tenants, and a master lease between the Commons Board and the CRC will take effect.

Another issue yet to be resolved is the above mentioned "***OBLIGATION OF CITY FUNDS BY CDI***".

COLUMBUS REDEVELOPMENT COMMISSION  
CITY OF COLUMBUS  
EXIT CONFERENCE

The contents of this report were discussed on October 3, 2012, with Kristen Brown, Mayor and President of the Redevelopment Commission; Luann Welmer, Clerk-Treasurer; Heather Pope, Redevelopment Commission Director; Kelly Benjamin, City Attorney; and Pam Harrell, Chief Deputy Clerk-Treasurer. The Official Response has been made a part of this report and may be found on page 10.



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Kristen Brown, Mayor

**Official Response**

**Columbus Redevelopment Commission Supplemental Report**

I have made it a priority and have taken significant steps toward dissolving CDI and transferring all of the assets and responsibilities of this entity to the Redevelopment Commission. In addition, Crowe Horwath, LLC has been engaged to provide a full financial audit of CDI's finances and is nearing completion. The new administration has made the dissolution of CDI and any further work, transactions or bidding processes of the Redevelopment Commission transparent to the public and in compliance with statutory requirements. Information and updates are relayed to the public through public meetings where public comment is invited. Purposes for which funds may be used, and for which agreements may be entered, are reviewed for statutory compliance, process and procedure.

The obligation of City Funds by CDI pursuant to the Memorandum of Agreement between CDI and Buckingham Cole, LLC, is currently being reviewed and addressed. Neither the City nor the Redevelopment Commission was a party to that or any other signed agreement available for review, binding the City to the \$300,000 payment to Buckingham Cole, LLC. The payment, if it were to be made, was to be paid prior to the new administration taking office. However, the payment was not addressed and remains pending. The City through its Redevelopment Commission desires to work toward a satisfactory resolution with Buckingham Cole, LLC.

Respectfully Submitted:

Kristen Brown, Mayor