



**Thomas A. Schweich**  
Missouri State Auditor

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# Washington Avenue Transportation Development District



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October 2014  
Report No. 2014-098

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**Thomas A. Schweich**  
Missouri State Auditor

# CITIZENS SUMMARY

## Findings in the audit of the Washington Avenue Transportation Development District

### Public Accessibility

The Transportation Development District (TDD) project, a parking lot located at 1100 Washington Avenue in the City of St. Louis, is not accessible to the public. The TDD was formed through a court order in August 2009. The project is a prepaid lease between the developer (original owner of the building adjacent to the parking lot) of the project and the TDD for a parking lot adjacent to one of the loft apartment buildings in the district. A 1-cent (1 percent) sales tax was imposed on retail sales within the district.

The intergovernmental agreement between the city, TDD, and the developer acknowledges the general economic benefit and value to the community created by the TDD project and provides for public access to the project. In addition, when the TDD leased the parking lot from the developer, who also owned the adjacent loft apartments, and when the TDD leased the parking lot back to the developer for \$1 per year, both leases state the parking lot will be open to the general public. In June 2013, we were told by a TDD Board member that the parking lot was open to the public. Instead, as evidenced by a photograph we took on a July 17, 2013, visit to the parking lot, the parking lot is gated with a code required to open the gate and clearly marked with signs stating, "Resident Parking" and "Unauthorized Vehicles will be Towed Away." The developer is leasing the parking spaces to 29 tenants of his apartment building and apparently collecting a total of \$1,450 per month.

When we returned to the parking lot on October 15, 2013, a sign advertised "Reserved Monthly Public Parking" and provided the developer's phone number. Approximately 2 weeks after our October visit, the entire TDD board resigned, and we subsequently learned the developer sold the parking lot, the adjacent building, and a \$1.141 million taxable sales tax revenue note in October 2013. The new owners said they did not know the parking lot was required by law to remain open to the public and did not know the TDD was not generating sufficient revenue to make payments on the note.

### Formation and Operation

The TDD did not receive approval from the city to enter into a leaseback of the parking lot to the developer for \$1 per year. Neither the developer nor the current owners are in compliance with the terms of the leaseback agreement, as the parking lot remains unavailable to the general public. Under the terms of the lease, the TDD is to pay the developer (or his successor) \$4,567 per month for the duration of the lease; however, no payments have been made. The Board has not adequately planned how the TDD will generate sufficient revenues to fund its obligations. Revenues have fallen sharply during fiscal year 2014, with sales tax collections from July 2013 through February 2014 of less than \$100. It appears at least one of the businesses within the TDD is not collecting the TDD sales tax on all transactions.

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Reconciliations and Financial Statements	The TDD does not perform formal bank reconciliations and submitted inaccurate financial statements to the State Auditor's office
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Financial Documentation	The Board did not maintain documentation to demonstrate the TDD revenues were only used to pay TDD formation costs. The developer also formed a Community Improvement District (CID) in conjunction with forming the TDD and paid approximately \$31,000 to form both, but has not submitted documentation to support the amount associated with the TDD formation. The TDD has paid \$10,059 toward the formation costs, but without additional documentation, it is unclear how much, if any, is still owed by the TDD or if an overpayment occurred. In addition, a portion of the TDD is in a Tax Increment Financing (TIF) district but there is no documentation to support how the TIF payments were determined or how much sales tax was received from each business within the TIF district.
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In the areas audited, the overall performance of this entity was <b>Poor</b> .*
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\*The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

- Excellent:** The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.
  
- Good:** The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.
  
- Fair:** The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.
  
- Poor:** The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

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# Washington Avenue Transportation Development District

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# THOMAS A. SCHWEICH

## Missouri State Auditor

Erin Johnston, Chairman  
and  
Board of Directors  
Washington Avenue Transportation Development District  
St. Louis, Missouri

We have audited certain operations of the Washington Avenue Transportation Development District in fulfillment of our duties under Section 238.272, RSMo. The scope of our audit included, but was not necessarily limited to, the period August 31, 2009, to June 30, 2010, and the 3 years ended June 30, 2013. The objectives of our audit were to:

1. Evaluate the district's internal controls over significant management and financial functions.
2. Evaluate the district's compliance with certain legal provisions.
3. Evaluate the economy and efficiency of certain management practices and operations, including certain financial transactions.

Our methodology included reviewing minutes of meetings, written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the district, as well as certain external parties; and testing selected transactions. We obtained an understanding of internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of contract or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

The accompanying Organization and Statistical Information is presented for informational purposes. This information was obtained from the district's management and was not subjected to the procedures applied in our audit of the district.

For the areas audited, we identified (1) deficiencies in internal controls, (2) noncompliance with legal provisions, and (3) the need for improvement in management practices and procedures. The accompanying Management Advisory Report presents our findings arising from our audit of the Washington Avenue Transportation Development District.



Thomas A. Schweich  
State Auditor

The following auditors participated in the preparation of this report:

Deputy State Auditor:	Harry J. Otto, CPA
Director of Audits:	Regina Pruitt, CPA
Audit Manager:	Todd M. Schuler, CPA
In-Charge Auditor:	Rex Murdock, M.S.Acct. Wayne Kauffman, MBA

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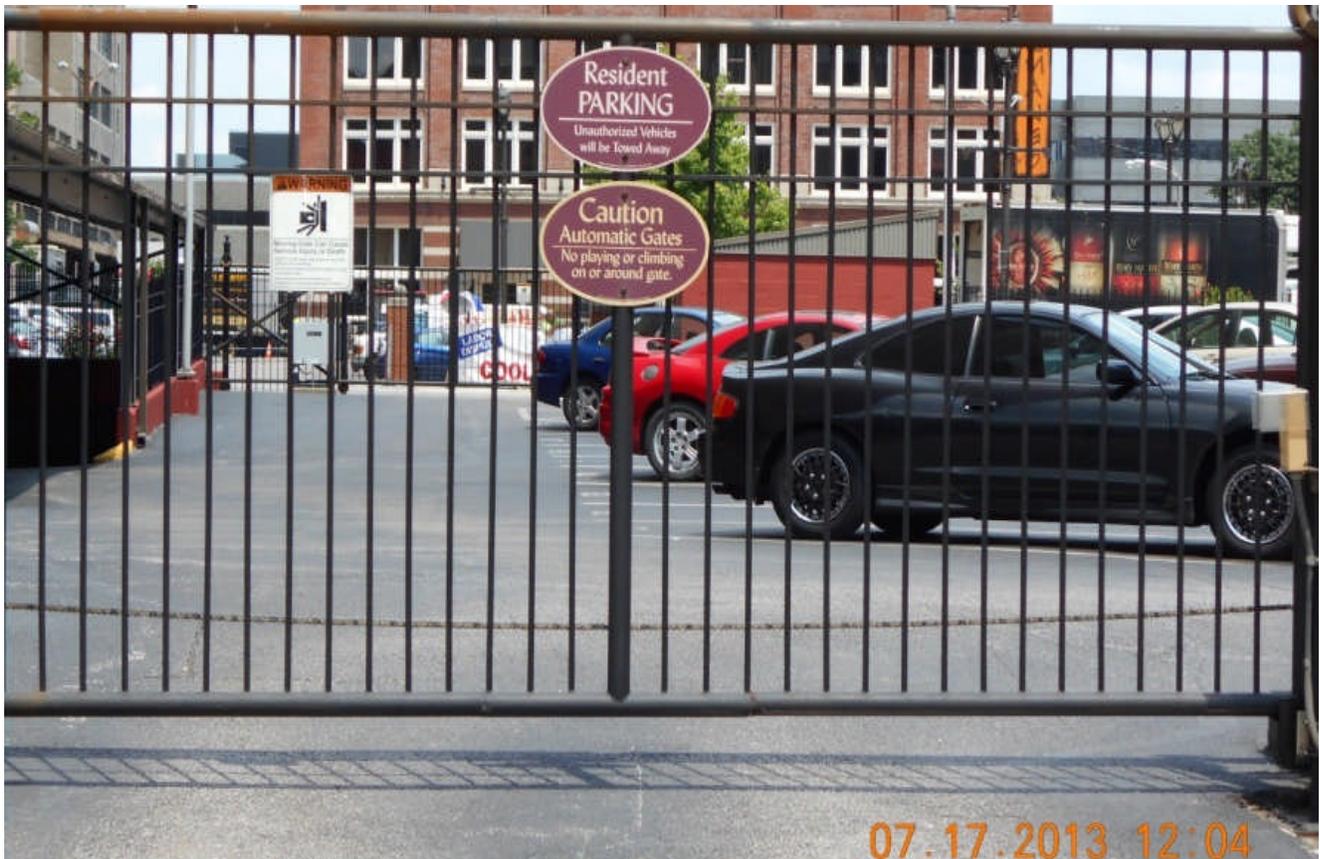
# Washington Avenue Transportation Development District Management Advisory Report State Auditor's Findings

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## 1. Public Accessibility

The Transportation Development District (TDD) project, a parking lot located at 1100 Washington Avenue in the City of St. Louis (city), is not accessible to the public. The TDD was formed through a court order in August 2009. The project is a prepaid lease between the developer (original owner of the building adjacent to the parking lot) of the project and the TDD for a parking lot adjacent to one of the loft apartment buildings in the district. A 1-cent (1 percent) sales tax was imposed on retail sales within the district.

The TDD leased the parking lot from the developer that formed the TDD in December 2010 for \$4,567 per month and issued a \$1,141,000 taxable sales tax revenue note to the developer. The TDD then leased the parking lot back to the developer for \$1 per year, giving the developer operational control of the lot. Both leases indicate the parking lot will be open to use by the general public. In June 2013, we asked a member of the TDD Board if the parking lot was available for general public parking and she said it was open to the public. On July 17, 2013, we visited the parking lot. The parking lot was gated with a code required to gain access. The following photograph was taken of one of the two lot entrances, but both entrances had the same signs and access restrictions.





## Washington Avenue Transportation Development District Management Advisory Report - State Auditor's Findings

Throughout our audit fieldwork, the Board member we spoke with in June repeatedly indicated the parking lot is available to the public. It is unlikely the public would know this based on the restricted access signage. We inquired who was currently parking in the lot and received a listing showing 29 tenants of the loft apartment building adjacent to the parking lot who lease spaces in the lot. Based on information available on the developer's web site, these spaces lease for \$50 per month to tenants, resulting in the developer potentially collecting \$1,450 per month for these parking spaces.

On October 15, 2013, we again visited the parking lot and noted a new sign had been added to each gate.



The phone number listed on the sign is the developer's number. The original TDD Board consisted of employees/representatives of the developer. Board members indicated no one from the general public has contacted the developer about parking in the lot. Approximately 2 weeks after our October 2013 visit to view the parking lot, all of the Board members resigned their positions. Subsequently, we learned the parking lot and adjacent building had been sold by the developer in October 2013, along with the taxable sales tax revenue note, to another company. It is unclear the



## Washington Avenue Transportation Development District Management Advisory Report - State Auditor's Findings

amount paid specifically for the revenue note, but the new owners indicate they were unaware the parking lot was required by law to remain open to the public or that the TDD was generating insufficient revenue to make payments on the note (see MAR finding number 2.3).

A visit to the parking lot on March 27, 2014, indicated the "reserved public parking" sign had been removed from both gates.



Section 3.1 of the ground lease and leaseback between the TDD and the developer indicates the parking lot shall be used for the primary purpose of parking, which shall remain open to use by the general public. Resolution No. 2010-005 of the TDD Board of Directors states the transportation project includes acquisition of a leasehold interest in a parking lot within the district for the purpose of providing additional public parking. The intergovernmental agreement between the city, TDD, and the developer states the city and the TDD acknowledge the general economic benefit and



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Washington Avenue Transportation Development District  
Management Advisory Report - State Auditor's Findings

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value to the community created by the TDD project and to provide for public access within the TDD project. Public access within the TDD project has been restricted in violation of the terms of these various agreements.

**Recommendation**

The TDD Board make the parking lot available to the public.

**Auditee's Response**

*The TDD Board provided the following written response:*

*The current Board members were all newly appointed in May 2014 and are still gathering information regarding the operations of the TDD. We will review the audit report with our legal counsel to confirm agreement with the report's findings and to determine the appropriate actions to take in light of the auditor's concerns.*

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**2. Formation and  
Operation**

The TDD has not received approval from the city to modify the project by leasing the parking lot back to the developer. The city serves as the local transportation authority (LTA) for the project. In December 2010, the TDD entered into a lease agreement for use of the parking lot with the developer and then on the same day, the TDD entered into a leaseback agreement with the developer. This leaseback gave the operational control and use of the parking lot back to the developer, while leaving the burden of maintenance and repair of the lot with the TDD. The parking lot was constructed prior to the formation of the TDD and we were provided no documentation to show additional funds were spent by the developer on the parking lot. Our review of the formation document, leases and agreements, and the current operations of the TDD revealed significant concerns.

**2.1 Modification of the  
project**

The TDD has not received approval from the city to enter into a leaseback of the parking lot to the developer, which constitutes a modification to the project. Modifications are required to be approved by the LTA according to state law. We were provided with a copy of an intergovernmental agreement between the TDD, the city, and the developer, which specifically mentions the lease of the parking lot by the developer to the TDD, but the agreement makes no mention of the leaseback. Ordinance No. 68435, passed by the city in June 2009, documents the city's approval of the intergovernmental agreement and indicates the transportation project will benefit the city by increasing the available supply of parking. The TDD is required by state law to have any modifications to the project approved by the city.

Section 238.257.4, RSMo, states the board may modify the project previously approved if the modification is approved by the LTA.

**2.2 Leases**

Neither the developer nor current owners are in compliance with the terms of the leaseback agreement entered into with the TDD.



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Washington Avenue Transportation Development District  
Management Advisory Report - State Auditor's Findings

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The TDD leased the parking from the developer for 30 years for \$1,141,000 plus interest, or \$4,567 per month for the duration of the lease. In conjunction with this lease, a \$1,141,000 taxable sales tax revenue note was issued by the TDD pledging the transportation sales tax revenues to make the payments on the lease. The leaseback between the TDD and the developer is for 20 years for \$20, or \$1 per year. It gives the developer operational control and use of the lot, and requires the TDD to pay for the maintenance and repair of the parking lot. The leaseback contains no language voiding the original lease, so if and when sales tax revenues are sufficient, the TDD is still responsible for making the monthly payments for the lot. The leaseback still requires the lot to be available for use by the general public, but the developer is leasing those spaces to tenants in the adjacent apartment building.

Violation of the terms of the leaseback agreement

The developer and now the current owners are violating the terms of the leaseback agreement. The TDD has the authority to lease a project to another entity, if the lease serves a function listed under Section 238.250, RSMo, or is necessary or convenient to fulfill the purpose of the TDD. Allowing the developer to operate the project serves a function provided for under the law; however, a primary purpose of the TDD project is to provide for public access. In addition, section 3.1 of the leaseback to the developer from the TDD indicates the parking lot shall be used for the primary purpose of parking, which shall remain open to use by the general public. Use of the lot has been restricted to only residents of the adjacent apartment building, in violation of the terms of the leaseback, and in conflict with a primary purpose of the TDD project. The Board should seek to enforce the terms of the leaseback agreement.

Section 238.250, RSMo, allows a TDD to contract with a corporation or partnership regarding funding, promotion, planning, designing, constructing, improving, maintaining or operating projects or to assist in such activity. Further, Section 238.252(5), RSMo, allows a TDD to exercise other implied powers necessary and convenient for the district to accomplish its purposes, which are not inconsistent with its express powers.

2.3 Financial condition and planning

The TDD has not adequately planned for how it will generate sufficient revenues to fund its obligations. Budgets prepared by the TDD indicate the Board did not anticipate sufficient revenues to pay the lease payments (approximately \$55,000 per year) and legal fees. No amounts are budgeted by the TDD for the lease payments. In addition, the TDD is potentially obligated to reimburse the developer for unpaid formation costs (see MAR finding number 4.1). Sales tax revenues have steadily declined over the past 3 years and it is questionable whether the TDD sales tax is being collected by all of the businesses operating within the TDD.



## Washington Avenue Transportation Development District Management Advisory Report - State Auditor's Findings

We contacted the Department of Revenue (DOR) and obtained a listing of the TDD and city sales tax collections by each of the 4 businesses located in the TDD, because both the city and TDD have a 1 percent tax rate on all sales. This listing showed the TDD collections were approximately \$7,000 less than the collections for the city during the same period of time, indicating at least 1 of the businesses was not collecting the TDD sales tax on all transactions. In addition, the listing shows collections for 1 of the businesses ended in 2011 and 2 others ended in 2012. It is unclear how the Board planned to pay its annual obligations with insufficient revenues being generated and Board meeting minutes included no discussion regarding the financial situation of the TDD. The budgeted revenue each year is far less than the approximate \$55,000 annual lease obligation and as the chart below shows, sales tax collections have come in significantly below the projected amounts.

Sales Tax Collections	Fiscal Year Ended				Total
	June 30, 2013	June 30, 2012	June 30, 2011*	December 31, 2010	
Budgeted	\$ 20,000	20,100	50,100	6,000	96,200
Actual	5,985	9,372	9,179	4,196	28,732
Deficit	\$ (14,015)	(10,728)	(40,921)	(1,804)	(67,468)

\*The Board adopted resolution 2010-001 in 2010 to change its fiscal year end from December 31 to June 30. As a result, the 2011 fiscal year budget is for the period January 1, 2011 to June 30, 2011.

Revenues have fallen sharply during fiscal year 2014, with sales tax collections from July 2013 through February 2014 of less than \$100. No principal or interest payments have been made toward the taxable sales tax revenue note issued to the developer and the Board has not developed a plan for paying ongoing administrative expenses and making payments on the note. The Board should contact the DOR and determine the status of the businesses in the district and whether the sales tax is being properly collected and remitted to help determine the viability of continuing TDD operations.

## Recommendations

The TDD Board:

- 2.1 Ensure the terms of the intergovernmental agreement are being met, and modifications of the original project and any subsequent leases related to the project are properly approved by the city.
- 2.2 Ensure the terms of any lease entered into are being followed by the lessee.
- 2.3 Investigate the cause of the declining revenues and develop a plan to generate adequate revenues to pay the annual obligations of the TDD.



Washington Avenue Transportation Development District  
Management Advisory Report - State Auditor's Findings

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## Auditee's Response

*The TDD Board provided the following written response:*

*The current Board members were all newly appointed in May 2014 and are still gathering information regarding the operations of the TDD. We will review the audit report with our legal counsel to confirm agreement with the report's findings and to determine the appropriate actions to take in light of the auditor's concerns.*

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## 3. Reconciliations and Financial Statements

TDD officials do not prepare formal bank reconciliations. In addition, they submitted inaccurate financial statements to the State Auditor's office (SAO). The beginning and ending fiscal year 2010 cash balances were understated by \$200 and the beginning and ending fiscal year 2011 cash balances were overstated by \$538. In addition, the fiscal year 2011 ending cash balance does not agree to the fiscal year 2012 beginning cash balance. These errors would have been identified if the Board Treasurer had reconciled the cash balances on the financial statements to the cash balances on the bank statements and transaction register.

The preparation of monthly bank reconciliations is necessary to ensure the accounting records are in balance and to identify errors timely. Accurate financial statements are necessary to keep citizens informed of the financial activity and condition of the district.

## Recommendation

The TDD Board ensure monthly bank reconciliations are performed and the financial statements submitted to the SAO are accurate.

## Auditee's Response

*The TDD Board provided the following written response:*

*The current Board members were all newly appointed in May 2014 and are still gathering information regarding the operations of the TDD. We will review the audit report with our legal counsel to confirm agreement with the report's findings and to determine the appropriate actions to take in light of the auditor's concerns.*

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## 4. Financial Documentation

We identified concerns regarding the repayment of TDD formation costs to the developer and payments made to the St. Louis Tax Increment Finance (TIF) Commission.

### 4.1 Formation costs

The Board did not maintain documentation to demonstrate that TDD revenues were only used to pay TDD formation costs. The TDD Board provided us a listing of the costs associated with forming the TDD and forming the 1133 Washington Avenue Community Improvement District (CID). The listing indicated the developer paid approximately \$31,000 in total for various expenses associated with forming the TDD and CID, but it did not indicate what portion of the total expenses related to the TDD. The TDD has paid \$10,059 toward the formation costs through the period ending



## Washington Avenue Transportation Development District Management Advisory Report - State Auditor's Findings

June 30, 2013, and it is unclear how much, if any, is still owed by the TDD or if an overpayment occurred.

Section 238.217, RSMo, allows the developer to be reimbursed for the fees of filing and defending the petition of the court to form the TDD. However, TDD revenues can only be used to reimburse the developer for the costs of filing and defending the TDD formation and cannot be used to reimburse the developer for the costs of filing and defending the CID formation.

### 4.2 TIF payments

The TDD Board is not adequately tracking the amount of sales tax monies collected from businesses within the TIF district and has no support for the amount of tax collections paid to the TIF district. A portion of the TDD is located in a TIF district and thus, 50 percent of the sales taxes collected by the businesses in the TIF, and received by the TDD, is due to the TIF district. The TDD made various payments totaling \$9,848 to the TIF district during the 3 years ended June 30, 2013, but there is no documentation to support how these payments were determined or how much sales tax was received from each business within the TIF district.

To ensure compliance with applicable statutes related to TIF payments and amounts paid to the TIF Commission are accurate, records related to sales taxes received and amounts due to the TIF Commission should be prepared and retained.

## Recommendations

The TDD Board:

- 4.1 Request documentation to support the formation costs applicable to the TDD and determine if any amount is still owed or a refund is due.
- 4.2 Perform an analysis to determine the portion of TDD sales tax revenues that should be paid to the TIF Commission.

## Auditee's Response

*The TDD Board provided the following written response:*

*The current Board members were all newly appointed in May 2014 and are still gathering information regarding the operations of the TDD. We will review the audit report with our legal counsel to confirm agreement with the report's findings and to determine the appropriate actions to take in light of the auditor's concerns.*

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# Washington Avenue Transportation Development District Organization and Statistical Information

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The Washington Avenue Transportation Development District (TDD) is located in the City of St. Louis. The TDD was organized in August 2009 by petition of the property owners within the proposed TDD. The members of the Board of Directors of the district are elected by the property owners and included two property owners and three members representing the property owners.

In September 2009, the qualified voters of the TDD, in this case the property owners, approved the imposition of a sales tax of up to 1-cent (1 percent) on all taxable transactions within the boundaries of the district. The Board of Directors subsequently passed a resolution that set the sales tax rate at 1-cent (1 percent), effective January 1, 2010, for 40 years, unless terminated sooner. The retail establishments within the district are required to collect and remit the sales tax to the Missouri Department of Revenue (DOR). In turn, the DOR distributes the sales tax monies to the district.

The TDD was formed for the purpose of acquiring, constructing, reconstructing and repairing a parking lot or garage and other related improvements; construction of public access areas to the district, construction, reconstruction, relocation, installation, and repair of streets, roads and signing; acquisition of right-of-way or easement rights necessary for any or all of the transportation project improvements; and other improvements located within or adjacent to the parking lot or garage right-of-way or street and roads including trees, lighting, landscaping and/or other decorative features. The City of St. Louis is the public entity with jurisdiction over these projects. The parking lot had already been constructed at the time the TDD was formed and no additional work has been performed on the project.

The TDD has a fiscal year end of June 30, and did not have independent audits performed for the 4 years ended June 30, 2013.

In October 2013, the developers sold all of the property located within the TDD and the entire Board of Directors resigned. A new Board of Directors was appointed at the May 2014 meeting of the property owners.

## District Board

An elected board acts as the policy-making body for the district's operations. The board's five members serve 3-year terms without compensation. Members of the board at June 30, 2013, were:

Bill Bruce, Chairman and Executive Director (1)  
Rachel Robards, Treasurer (2)  
Kathy Kleiman, Secretary (2)  
Brian Bruce, Member (1)  
John Perkins, Member (2)

(1) Property owner

(2) Property owner representative



Washington Avenue Transportation Development District  
Organization and Statistical Information

Effective in May 2014, members of the board are:

Erin Johnston, Chairman  
John Alvery, Executive Director  
Stuart Woody, Treasurer  
Chad Sneed, Secretary  
Pat Gerlich, Member

## Financial Activity

On December 15, 2010, the TDD leased the parking lot from the developer for \$1,141,000 for a period of 30 years. As compensation for the lease, the TDD issued a \$1,141,000 taxable sales tax revenue note, payable to the developer in monthly installments of \$4,567. The TDD has not made any payments toward the note since it was issued. The note indicates it is only secured by available resources and shall not constitute a general obligation of the district, city, or state.

A summary of the district's financial activity for the 3 years ended June 30, 2013, follows:

	Year Ended June 30,		
	2013	2012	2011
RECEIPTS			
Sales taxes	\$ 5,985	9,372	9,179
Total Receipts	<u>5,985</u>	<u>9,372</u>	<u>9,179</u>
DISBURSEMENTS			
Professional fees	2,143	9,409	3,793
Tax increment financing	<u>2,653</u>	<u>3,777</u>	<u>3,418</u>
Total Disbursements	<u>4,796</u>	<u>13,186</u>	<u>7,212</u>
RECEIPTS OVER (UNDER) DISBURSEMENTS	1,189	(3,815)	1,967
BEGINNING CASH	<u>1,064</u>	<u>4,879</u>	<u>2,911</u>
ENDING CASH	<u>\$ 2,253</u>	<u>1,064</u>	<u>4,879</u>