Report of the Vermont State Auditor

DOUGLAS R. HOFFER
Vermont State Auditor

City of Burlington Waterfront Tax Increment Financing District

Numerous Errors in Waterfront TIF District Administration: City Owes TIF District $1.2 Million and State Education Fund $197,510

January 20, 2023

Rpt. No. 23-01

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Mission Statement

The mission of the Auditor's Office is to hold State government accountable by evaluating whether taxpayer funds are being used effectively and identifying strategies to eliminate waste, fraud, and abuse.

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Dear Colleagues,

This represents the second legislatively required audit of the City of Burlington's Waterfront (WFT) TIF District. Our audit objectives were to determine 1) whether, from FY2011-FY2021, the City obtained required authorizations to issue its TIF district debt and used those funds to finance eligible improvement projects, and 2) For the same period: a) whether the City retained the appropriate amount of education and municipal tax increment in its Waterfront TIF Fund and remitted the required annual payment to the State's Education Fund, and b) whether the City used tax increment for allowable purposes.

The City issued $15,837,610 of bonds for public improvements including Moran Frame, Waterfront Access North, Bike Path, and Waterfront Park. Key findings include:

- The City struggled to produce accounting records that showed the cost for each improvement project that was funded with this TIF debt. As a result, the City needed to revise its records as issues were uncovered during the audit.
- Of the $10.9 million of TIF-funded improvement costs we tested, the City did not provide adequate evidence to substantiate that $173,056 of bike path rehabilitation costs was for work inside the TIF district boundaries. Thus, the costs are ineligible to be funded with TIF.
- The amount of incremental tax revenue the City kept in its WFT TIF Fund to pay for TIF district debt is lower than it should be due to several errors in the City's tax increment calculations.
- The City underpaid the State Education Fund and owes an additional $197,510.
- The City spent $1 million more for project costs than the amount of TIF financing authorized by voters. The City acknowledged the error and has indicated that it will repay the WFT TIF Fund using General Funds. Disarray in improvement project costs records and a lack of documented procedures for accounting for TIF improvement projects are the main causes of this mistake.
- The City's errors were so numerous and of so many different types, it is clear a new process is required to reduce the risk of significant errors in the future.

We make several recommendations to the City, including that the City's General Fund repay the WFT TIF Fund $1.2 million and remit $197,510 owed to the State Education Fund. We also identified other WFT TIF matters that would benefit from clarification from the Legislature, so we make recommendations to the Legislature to address these as well.

I would like to thank the management and staff at the City of Burlington for their cooperation and professionalism throughout the course of this audit.

This report is available on the state auditor's website.

Sincerely,

Doug Hoffer

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Highlights

Tax increment financing (TIF) is a tool municipalities can use to finance public infrastructure, such as streets, sidewalks, and storm water management systems. In Vermont, establishing a TIF district allows a municipality to designate an area for such improvements, incur debt to finance the area's public infrastructure, and retain a portion of the area's growth (or "increment") in property tax revenues to pay back the debt. The incremental property tax revenues used to repay the debt include municipal property taxes (municipal tax increment) and statewide education property taxes (education tax increment). Thus, in a TIF district, a portion of state education property tax revenue is kept by the municipality to pay for infrastructure and debt. Normally these funds would be sent to the State's Education Fund to pay for public education.[1] According to the Joint Fiscal Office 2022 TIF report, "Because the Education Fund is a system where all property taxpayers share the burden of school spending, if there is a diversion of property tax growth to fund development, this must be made up by taxpayers in non-TIF areas of the State."

The City of Burlington (the "City") established its Waterfront (WFT) TIF district on January 22, 1996, to redevelop Lake Street and nearby waterfront property.[2] On June 23, 1997, the city expanded its TIF district with a sliver of property extending from the lakefront to Church Street to support new housing and parking.

The State Auditor's Office's (SAO) first audit of the WFT TIF district covered activities through FY2010. Since FY2010, the City successfully lobbied the Legislature to give the City more time to borrow money for district improvements and to keep money that would otherwise be spent on public education. This second audit of the WFT TIF District reflects the next eleven years of activity through FY2021.This audit's objectives were to determine:

1. Whether, from FY2011-FY2021, the City obtained required authorizations to issue its TIF district debt and used those funds to finance eligible improvement projects, and

2. For the same period:
   a) whether the City retained the appropriate amount of education and municipal tax increment in its Waterfront TIF Fund and remitted the required annual payment to the State's Education Fund, and
   b) whether the City used tax increment for allowable purposes.[3]

[1] Education funding is statewide and accounts for all the education taxes collected and spent in communities across the State. Municipalities collect statewide education property taxes on behalf of the State and remit the taxes collected to their local school systems, or to the state directly, depending on the amount collected relative to the amount required to fund the local school system.

[2] The City created a second TIF district in 2011 known as the Downtown TIF District.

[3] Appendix I details the scope and methodology of the audit. Appendix II contains a list of abbreviations used in this report.

Objective 1 Finding

City Council action in 2011 and three public votes held from 2012 to 2016 authorized the City to issue debt and use incremental property tax revenue (e.g., "TIF financing") to pay for a total of $37,916,610 of improvements and related costs. Requirements for holding a public vote and the information to be provided in advance of the vote varied during this period and the City did not comply with all requirements. A Vermont Superior Court ruled that technical and procedural errors raised in a lawsuit brought by several Burlington residents in connection with the 2016 public vote were insufficient to void the voting results. The TIF statutes and rules do not specify a particular remedy for deficiencies in information provided to voters and errors in public vote processes. As a result, it isn't clear what level of noncompliance would invalidate a public vote or require municipalities to take steps to correct deficiencies.

The City issued $15,837,610 of bonds and other financing instruments through December 31, 2019, the end of two legislatively authorized extensions to the borrowing period that began January 1, 2010.[4] However, the City struggled to produce accounting records that showed the costs for each improvement project that were funded with this TIF debt. We raised concerns about requisitions (i.e., lists of invoices) submitted to the Vermont Municipal Bond Bank (VMBB) to support release of $7.8 million of bond proceeds to the City, leading to the discovery of about $1.8 million of errors. Specifically, some invoices were submitted to VMBB twice, and the City's accounting records showed several other invoices had already been paid for with federal grants. Over several months, a former City capital projects director worked part-time to uncover all problematic costs submitted to VMBB and to develop a revised list for resubmission.

We tested $10.9 million improvement project costs (80 percent of total improvement costs from FY2011 to FY2021) from a corrected list of invoices for VMBB and various other City records. We concluded that $173,056 for bike path rehabilitation was not eligible to be financed with TIF debt because the City did not provide adequate evidence that the costs were for work inside the TIF district boundaries. The City may not use tax increment to repay this portion of TIF debt. Rather, it must use its own municipal property tax revenue.

The City failed to establish a comprehensive framework to track improvements costs by project and the source of funding (e.g., TIF debt) in the general ledger accounting system.[5] The City also lacked documented procedures for accounting for TIF improvement projects. Inadequate communication between project managers and the City's finance department, along with turnover in project managers, exacerbated the weaknesses in recordkeeping and led to confusion regarding the sources of funding for various TIF improvement projects. Each year from FY2017 to

4 Per Act 54 (2009) Sec. 83 and Act 80 (2013) Sec. 18. The Legislature authorized a third extension in Act 134 (2016), but it is subject to a contingency that the City had not met as of the date of this report.

5 A general ledger is comprised of all the accounts used to record financial transactions of an organization such as revenue and expenses.

FY2020, the City's financial statement audit firm flagged incomplete capital project accounting as a weakness and repeatedly recommended that the City establish a comprehensive framework for tracking project costs and debt in the general ledger accounting system. With assistance of a consulting firm, the City finally did so in 2022. In May 2021, the City contracted with another consulting firm with experience administering TIF districts, and this firm will assist with overseeing the assessment of eligible improvement costs and tracking the use of debt proceeds to specific TIF projects.[6] The City has documented the procedures that will be used going forward, including the consulting firm's role.

Objective 2(a) Finding

From FY2011 to FY2021, the City kept $24,719,361 of incremental property tax revenue ("tax increment") in its WFT TIF Fund to pay for TIF district debt and related costs.[7] However, this amount is lower than it should be because the City's tax increment calculations were rife with errors. The City made 49 tax increment calculation errors, from one to seven each year during the period under audit. The effect of these errors ranged from $457 to almost $250,000. In total, the errors exceeded $1.5 million. By chance, the errors largely offset themselves, but the City owes $37,717 of municipal tax increment to the WFT TIF Fund. Mistakenly including the incremental property value growth from another TIF district and failing to include a component of the municipal tax rate were the most significant mistakes in the tax increment calculation. The TIF consulting firm the City hired in May 2021 will manage the City's calculation of tax increment and determination of the amount that may be kept for repayment of TIF district debt and related costs.

The City remitted $30,311 of education tax increment to the State Education Fund but owes an additional $197,510 because of errors in the processes used to determine the amount owed. The following are the most significant flaws:

- Payments were administered manually by the City for the first three years (FY2013 to FY2015) that a payment was owed, and the City overpaid $5,430 using tax increment from the WFT TIF Fund. Miscalculation, and possibly internal miscommunications, accounted for errors in these years, as the City had not established written procedures for the determination of amounts owed to the State Education Fund.

  In FY2016, the City's payment of a portion of the education tax increment to the State Education Fund was automated via New England Municipal

6 The two-year contract with the consulting firm totals $100,000 and the firm has been paid $37,900 to date.

7 Per 24 V.S.A. §1891(6) and TIF Rule Sec. 300, related costs are expenditures incurred and paid by a municipality, other than the actual cost of construction and financing of improvements, that are directly related to the creation, implementation, administration, and operation of a District.

Resource Center (NEMRC), the State's grand list system.[8] The automated process functioned correctly the first two years but in the next four years (FY2018 to FY2021), the City consistently underpaid. The total under payment was $119,154, which is owed to the State Education Fund. Custom coding, used to accommodate the unique and rather complex WFT TIF District calculations, and lack of rigorous data verification, specific to the WFT TIF District data reported to the Tax Department's Division of Property Valuation and Review (PVR), may have led to the perpetuation of the errors.[9] The City, NEMRC and PVR were aware to some extent of problems with how the NEMRC system handled TIF district properties but failed to address them. PVR plans to implement a manual calculation to check the accuracy of the State Education Fund payment per the NEMRC system going forward.

- A property that should have been recognized as a taxable parcel from the creation of the TIF district was not included as such when the original taxable value was certified in 2017 as required by the TIF Rule even though the mistake in tax status was known to the City at that time. The failure to adjust original taxable value (OTV) caused the City to underpay the State Education Fund by $83,786.

The City overpaid the State Education Fund from FY2013 to FY2015 and underpaid it from FY2018 to FY2021. The result is that the City owes $197,510 to the State Education Fund.[10] Commencing in FY2016, the payment of education tax increment no longer flowed through the WFT TIF Fund. Rather, it flowed through the General Fund. By underpaying the State Education Fund, the City kept education tax increment in its General Fund and thus the General Fund must be the source used to repay the State Education Fund. Because the City used tax increment from the WFT TIF Fund to make the overpayments from FY2013 to FY2015, the City also owes $5,430 to the WFT TIF Fund.

Objective 2(b) Finding

The City's accounting records show that from FY2011 to FY2021, about $22.6 million of tax increment was used, including more than $1 million to fund Waterfront Access North (WAN) and Bike Path project costs in FY2014 and FY2015. Tax increment may be used to fund project costs if authorized by municipal voters. In this case, the City was capped at $14.6 million of debt and tax increment combined to fund improvement projects. However, the City issued $14.6 million of

8 The grand list data forms the basis for the collection of property taxes for all the municipalities in Vermont and includes the owner's name and assessed value for all real estate parcels, all taxable personal estates, and tax-exempt properties.

9 PVR also identified errors in the City's FY2022 and FY2023 data submissions. The FY2023 data submission is still preliminary, so PVR will verify that the Education Fund payment is calculated correctly. According to PVR, the FY2022 data, however, was processed incorrectly and the City underpaid the Education Fund. PVR, City and NEMRC are cooperating to determine the correct amounts due to the Education Fund.

10 The amount owed is equal to $197,510=$119,154 + $83,786 - $5,430.

debt and used more than $1 million of tax increment to fund improvement projects. The City acknowledged that the use of tax increment for direct payment of project costs was in error and has indicated that it will repay the WFT TIF Fund using General Funds.

The City's allowed expenditures included $20.3 million of TIF debt service payments (principal and interest) and $784,949 of the City's Community and Economic Development Office (CEDO) personnel costs and various professional services costs (known as related costs), authorized by the City Council through FY2020. In addition, the City used tax increment for another $178,098 without approval of the City Council. This amount included more than $30,000 of the *Downtown* TIF District (Burlington has a whole other TIF District, which must be kept separate) related and other ineligible costs, and more than $32,000 of internal City staff attorney costs. Per a City official, the cost of the Downtown District and internal staff attorney costs will be reversed, and the funds will be returned to the WFT TIF Fund. The failure to consistently obtain City Council approval for related costs may explain the use of WFT TIF district tax increment for the ineligible costs associated with the Downtown TIF District and the internal staff attorney costs.

Other Matters

During the life of the WFT TIF District, the Legislature has codified numerous extensions and exemptions, which added complexity to the administration of this TIF district. Some of the issues we uncovered during the audit are directly related to these complexities. At times, these modifications present unanswered questions.

Two issues arising from Act 134 (2016) could benefit from clarification.

When the City requested that the Legislature extend both the borrowing period and tax increment retention period for the CityPlace property in the WFT TIF District, City officials acknowledged that the WFT TIF District end date was FY2025. Additionally, officials asserted that redevelopment of the CityPlace property alone would produce sufficient tax increment to service TIF debt for the public improvements (e.g., Great Streets) required to support the redevelopment.

Consistent with the City's request, Act 134 (2016) extended the City's borrowing period and retention of tax increment for three properties.[11] However, it did not address whether surplus tax increment accumulated through FY2025 could be kept and used to repay TIF debt incurred during the extended borrowing period.

In a 2019 substantial change request filed with the Vermont Economic Progress Council (VEPC), the City indicated that the private development project had changed, and the City now intended to utilize any surplus tax increment accumulated through FY2025 in addition to tax increment generated by the three

[11] Act 134 (2016) amended Act 80 (2013) Sec. 18 which had extended the City's borrowing period to December 31, 2019 and specified that the extension of the borrowing period did not extend any period that municipal, or education tax increment could be retained.

properties to pay debt issued to finance public infrastructure improvements associated with CityPlace. The Agency of Commerce and Community Development (ACCD) General Counsel advised VEPC that adequate support exists for Burlington's plan to use surplus tax increment accumulated through FY2025 for paying debt associated with the Great Streets public infrastructure improvement.[12] However, the General Counsel's analysis did not address Act 45(2011) Sec. 16 (b)(1) which explicitly states that the Waterfront TIF district ends in FY2025, and that surplus tax increment must be distributed at that time. [13] If this issue isn't addressed in a timely manner, the State Education Fund may not receive tax increment revenues as the Legislature intended.

Second, Act 134 (2016) did not address significant aspects of the tax increment calculation and determination of payments to the State Education Fund, if any. Specifically, the following is not specified:

- Base value to be used to calculate incremental value for three properties during the extended tax increment retention period (FY2026 to FY2035),
- Percent of education tax increment that may be retained,
- Percent of education tax increment required to be paid to the State Education Fund during the extended period, if any, and
- Percent of municipal tax increment required to be allocated to the WFT TIF Fund.

Clarification of these issues will ensure that the City manages the Waterfront TIF District consistent with the Legislature's intent and that the State Education Fund receives education tax increment when it is supposed to.

Recommendations

We made several recommendations to the City to remedy inadequate recordkeeping, mistakes in the tax increment calculation, and inappropriate use of tax increment. We also made recommendations to VEPC and the Legislature, including that VEPC require the City to provide complete and accurate records of improvement costs paid for with TIF debt for each project commencing in FY2011 and thereafter, and the Legislature consider clarifying statute to indicate whether and when public vote disclosures that do not comply with statute and rule requirements invalidate the results of a public vote or require correction of deficiencies.

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12 The General Counsel works for ACCD, not the Attorney General's Office (AGO). In our audit of the St. Albans TIF district, the AGO concluded that TIF district debt proceeds may not be used to make debt payments but the ACCD General Counsel reached a different conclusion. For the question of whether surplus tax increment at the end of FY2025 must be distributed to the Education Fund, we did not receive AGO advice and instead are bringing the matter to the attention of the Legislature.

13 In a September 9, 2009, letter to the Chair of the Joint Fiscal Committee, the City's mayor defined surplus as tax increment in excess of amounts pledged for payment of financing for public improvements.

Background

Unlike other TIF districts in Vermont, Burlington's WFT TIF District was grandfathered to retain 100 percent of its tax increment until Act 54 (2009) introduced changes, requiring Burlington to make an annual payment to the State Education Fund approximating 25 percent of the education tax increment.

Per the calculation memorialized in Act 45 (2011), the City is required to pay 25 percent of the education tax increment generated on all district properties, except two hotels, using a new base established April 1, 2010. This works as follows:

- The City keeps 100 percent of education tax increment generated on the growth in TIF district property value from 1996 to 2010.
- The City keeps 100 percent of the education tax increment generated from the growth in property value for two hotel properties after April 1, 2010.
- The City keeps 75 percent of the education tax increment generated from the growth in TIF district property value after April 1, 2010, excluding two hotel properties.
- The City pays the Education Fund 25 percent of the education tax increment generated from the growth in TIF district property value after April 1, 2010, excluding two hotel properties.

TIF District Debt and Tax Increment

Generally, municipalities with TIF districts are limited to a 10-year borrowing period to finance improvements and related costs commencing with establishment of the district.[14]

The City of Burlington has had twenty years to borrow for improvements for the entire district and could have an additional three and a half years for improvements related to three specific properties. The initial borrowing period for the WFT TIF district was 10 years from April 1, 1996, to March 31, 2006. The following describe the extensions:

- Act 54 (2009) extended the borrowing period five years beginning January 1, 2010, to December 31, 2014.
- Act 80 (2013) extended the borrowing period another five years beginning January 1, 2015, to December 31, 2019.

[14] Municipalities have ten years to borrow to finance improvements if the first debt is incurred within five years of creating the TIF district.

- Act 134 (2016) extended the borrowing period to June 30, 2021, for improvements related to three specific parcels. Acts 175 (2020) and 73 (2021) extended this to June 30, 2023, as part of extensions generally provided to all municipalities with TIF districts due to interruptions caused by the COVID-19 pandemic.

Per the TIF Rule, municipalities may keep tax increment for 20 years from the date the first debt is incurred. In the case of the WFT TIF District, the City may keep tax increment generated from the entire district for 29 years and another 10 years for three properties.

At inception of the WFT TIF District in 1996, the City was allowed to keep tax increment until all debt was fully paid. This was modified by Act 190 (2008) to limit retention to 20 years from the date the last debt issued between April 1, 1996, and March 31, 2006, (e.g., the original borrowing period). The last debt issued during this initial period was in June 2005. Thus, the end of tax increment retention was set at June 30, 2025. This cutoff has remained except for an extension provided for in Act 134 (2016) which allows the City to retain tax increment generated by three properties until June 30, 2035.

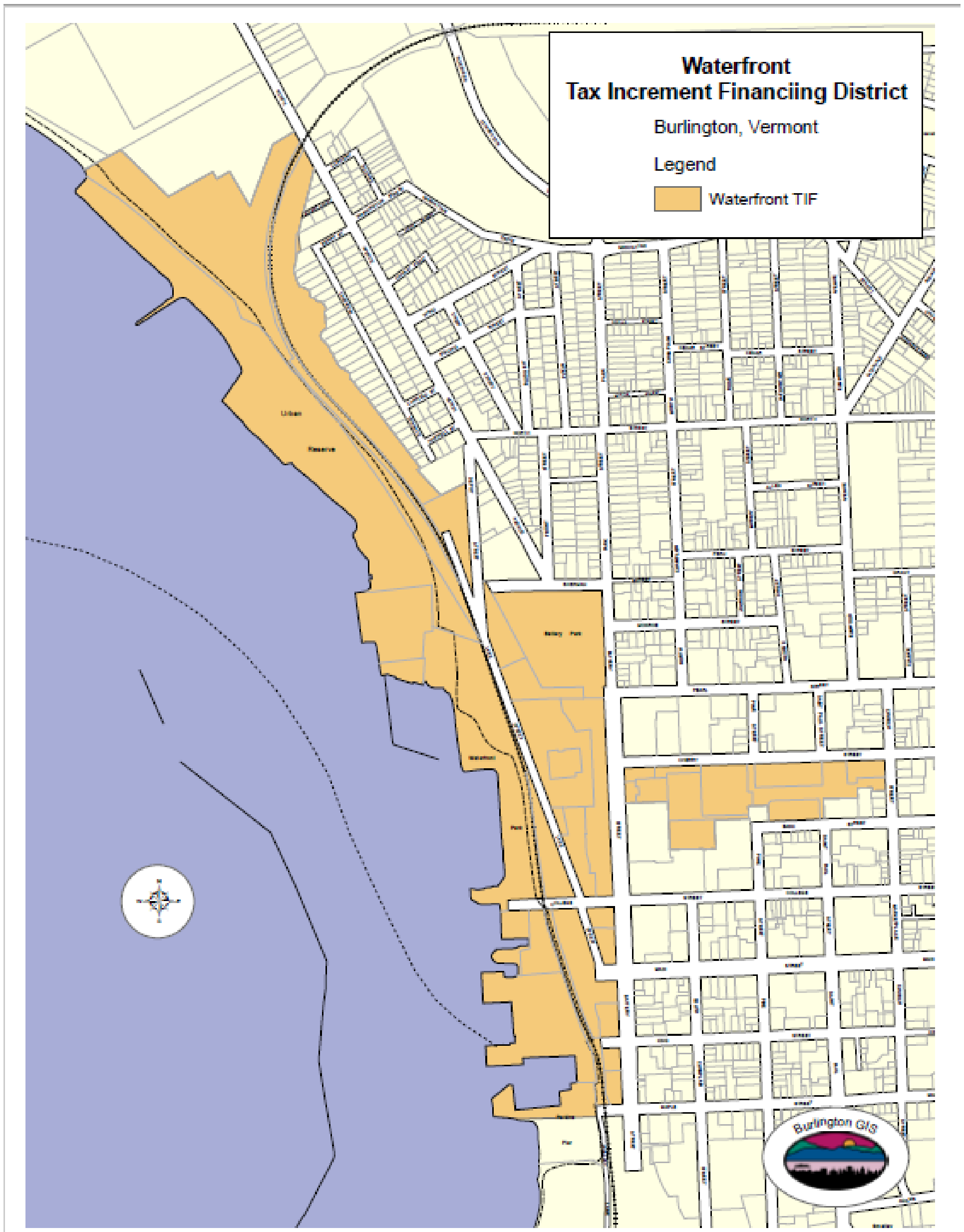
TIF District Oversight

Since 2006, a municipality desiring to utilize incremental education property tax to finance TIF district improvements must file an application with VEPC. As the WFT TIF District was established in 1996, and expanded in 1997, it was not subject to this requirement. VEPC is charged with oversight and non-compliance enforcement of all districts. Per the TIF Rule, the City was required to file a District Reconciliation with VEPC, and this serves as the foundational document for implementing the TIF district. TIF Rule 605 required a variety of information to be included in the District Reconciliation such as information regarding debt incurred and anticipated and infrastructure improvements completed and anticipated.

Burlington WFT TIF District Highlights 1996 to 2010

Figure 1 illustrates the TIF district.

Figure 1: Map of WFT TIF District



According to city officials, infrastructure improvements to Lake Street, the Westlake Garage, and the Lakeside Parking Garage encouraged business growth. Private "anchor projects" included Macy's (currently used as Burlington High School), the Marriot Hotel, an office and retail building on Lake Street, and 16 residential condos and 40 units of affordable housing also along Lake Street. The WFT TIF district improvements were funded as follows:

- $2.5 million in state grants from the Vermont Agency of Commerce and Community Development,
- $1.6 million in United States Department of Housing and Urban Development (HUD) Section 108 loans, and
- $15.2 million in certificates of participation.[15]

Table 1 presents types of debt issued from 1996 to 2010, principal and interest cost for each, and the improvement projects financed with the debt.[16]

Table 1: Principal, Interest, Type of Debt, and Improvement Project Financed per City from 1996 to 2010

Type of Debt	Principal	Interest	Year of Payoff	Improvement Project Financed per City
Housing and Urban Development (HUD) Sec. 108 Loan	$1,148,350	$492,045	2017	Lake Street reconstruction
HUD Sec. 108 Loan	$495,000	$382,757	2018	Lake Street Housing
Certificates of Participation Series 1999B (COPS)	$1,390,000	$690,649	2014	Urban Reserve
COPS Series 1999A and Series 2005A[a]	$13,370,000	$6,548,075	2024	Lakeview Garage
COPS Series 2000[a]	$407,000	$282,206	2020	Fishing Pier
Totals	**$16,810,350**	**$8,395,732**		

[a] These debt instruments were refunded in 2016 (paid off with proceeds of newly issued COPS). Interest reflects amounts paid for original COPS through refunding in 2016 plus interest for the newly issued COPS.

Through FY2010, the City retained $7,804,902 of incremental education and municipal property tax revenue. As previously noted, the City kept 100 percent of the incremental education property tax revenue but a statutory change in 2009 required the City to implement a payment to the State Education Fund that would approximate 25 percent of the incremental education property tax increment. Had the City been required to pay 25 percent from inception of the district, the State Education Fund would have received an additional $1.5 million through

15 A type of debt financing arrangement structured as a lease that pledges a specific revenue stream (such as incremental property tax revenue) for repayment

16 The City's first borrowing period ended March 31, 2006.

FY2010. See Objective 2a for incremental tax revenue retained by the City and remitted to the State Education Fund from FY2011 to FY2021.

Objective 1: City Issued $15.8 Million of Approved Debt; Audit Uncovered $1.8 Million Mistake in Recordkeeping as well as $173,056 of Ineligible Costs

The City did not follow all legal requirements prior to obtaining municipal voter approval for $15,837,610 of bonds and other financing instruments (e.g., TIF debt) issued to pay for WFT TIF District improvements. For example, in the 2012 public vote, municipal voters were not informed that the City is liable for full payment of the debt if incremental tax revenue is insufficient to pay debt principal and interest. With regard to the 2016 public vote, a Vermont Superior Court ruled that technical and procedural errors raised in a lawsuit filed by several Burlington residents were insufficient to void the voting results. Statute and the TIF Rule do not specify a particular remedy for deficiencies in information provided to voters and errors in public vote processes. This court decision was not appealed. Thus, the Vermont Supreme Court did not rule on the level of noncompliance that would invalidate a public vote on TIF financing or require municipalities to take steps to correct deficiencies.

The City had difficulties producing complete and accurate records detailing eligible TIF improvement costs paid for with TIF debt for each project and some records contained mistakes. For example, the VMBB released $7.8 million of debt proceeds to the City based on requisitions (i.e., lists of invoices) the City submitted to VMBB and represented were eligible to be paid for with TIF debt. However, we raised concerns to City personnel about several invoices in the requisitions; including that some were submitted to VMBB twice, and the City's accounting records showed several other invoices had already been paid for with federal grants. Over several months, a former City capital projects director worked part-time to uncover all problematic costs submitted to VMBB and to develop a corrected list for resubmission. In total, the former director determined that about $1.8 million of the invoices originally submitted to VMBB were of questionable eligibility.

We tested $10.9 million of improvement project costs (80 percent of total costs financed with TIF debt) from the corrected list of invoices for VMBB and various other City records and concluded $173,056 of bike path rehabilitation costs was not eligible to be paid with TIF debt because the City did not provide adequate evidence to show that the work occurred inside the TIF district boundaries. Since TIF debt may only be repaid with incremental property tax revenues if the debt was used to pay for eligible TIF improvement costs, the City must repay $173,056 of the TIF debt with its own municipal property tax revenue, not tax increment.

The City's deficient recordkeeping was due to the failure to establish a comprehensive framework in the general ledger accounting system to track improvements costs by project and the source of funding (e.g., TIF debt). The City also lacked documented procedures for accounting for TIF improvement projects. Poor communication between project managers and the City's finance department and turnover in project managers exacerbated the weaknesses in recordkeeping and led to confusion regarding the sources of funding for various TIF improvement projects. Each year from FY2017 to FY2020, the City's financial statement audit firm repeatedly recommended that the City establish a comprehensive framework for tracking project costs and debt in the general ledger accounting system. With assistance from a consulting firm, the City finally did so in FY2022. In May 2021, the City contracted with another consulting firm with experience administering TIF districts. This firm will assist with overseeing the assessment of eligible costs and tracking the use of debt proceeds to specific TIF projects. The City has now documented the procedures that will be used going forward, including the consulting firm's role.

All Legal Requirements Not Followed When Voters Approved TIF Debt

City Council action in 2011 and three public votes held from 2012 to 2016 authorized the City to issue debt and use incremental property tax revenue (e.g., "TIF financing") to pay for a total of $37,916,610 of improvements and related costs. Statutory and rule requirements for holding a public vote and the information to be provided in advance of the vote varied during this period. The City did not comply with all statutory and rule requirements.

VEPC authorization wasn't required for any of the debt approved by City Council and voters because 1) the Waterfront TIF District wasn't subject to VEPC monitoring and oversight until the City filed the required District Reconciliation with VEPC in 2015 and 2) the Legislature authorized public infrastructure improvements associated with the private CityPlace development when it allowed additional borrowing for these improvements in Act 134 (2016).[17]

Table 2 presents the year of approval and authorized amount of TIF financing for improvements and related costs.

Table 2: Authorized Financing for Improvements and Related Costs

Year	City Council Approval or Public Vote	Amount Authorized		Improvement and Related Costs[a]
		Improvements[b]	Related Costs	
2011	City Council	$436,610	-	College Street Parking Garage
2012	Public vote	$5,470,000	$580,000	Waterfront Access North (WAN), Bike Path Rehabilitation and related costs
2014	Public vote	$9,100,000	$500,000	WAN, Champlain Sailing Center, ECHO Sustainability Park, Burlington Harbor Marina, Moran Frame, Bike Path, Waterfront Park, and related costs
2016	Public vote	$20,927,000	$903,000	Great Streets and related costs
	Totals	**$35,933,610**	**$1,983,000**	

[a] See Appendix V for improvement project descriptions.
[b] The amount authorized is for the cost of improvements and does not include debt payments.

Responsibility for TIF Debt Payment

The disclosure required by 24 V.S.A. 1897(b) ensures local voters understand that municipal taxpayers will be responsible for paying for TIF district debt if property value growth in the TIF district is insufficient to generate the necessary revenues to make debt service payments.

The City did not hold a public vote prior to obtaining lease financing in 2011 since it was only required for bonds at that time. Further, according to City staff, the City's charter permits City Council to authorize lease financing.[18]

In 2012, the City held a public vote to obtain authorization to issue bonds but did not inform voters as required by 24 V.S.A. §1897(b) that the City is liable for full payment of the debt if incremental property tax revenue is insufficient to pay debt principal and interest.

Commencing in 2013, statute required municipalities to hold a public vote for each instance of borrowing, regardless of the type of debt instrument, and to provide information to municipal voters in advance of the vote including: 1) the new amount of debt proposed, 2) total outstanding debt approved to date, 3) types of debt, 4) interest and fees, 5) term of debt, 6) improvements to be financed, and 7) expected

17 Act 134 (2016) Sec. 9a
18 City of Burlington City Charter Section 48(58)

development. TIF Rule 1003.2.2, effective May 6, 2015, reiterated these requirements and specified that the public vote must be preceded by an appropriately warned public hearing at which the required detailed information is presented.[19]

For the 2014 and 2016 votes, the City held public hearings in advance of each public vote but did not provide all legally required information to municipal voters in 2014 and committed a procedural error in 2016.

Interest Rates

The requirement to disclose an estimate or range of interest rates informs municipal voters of the true cost of TIF improvements. As shown in Table 1 and 3, Burlington will pay more than $11 million in interest for $32.6 million borrowed to pay for improvements.

- **2014 vote:** the City did not provide an estimate or range of interest for bonds or the Housing and Urban Development (HUD) Sec. 108 Loan in the public information notice as required by 24 V.S.A. §1894(i).

- **2016 vote**: According to a lawsuit filed in Vermont Superior Court by several Burlington residents, the City committed technical and procedural errors related to placing the TIF referendum on the ballot. For example, the City Council approved the ballot item in September 2016 *before* the November 2016 public hearing despite TIF Rule 718 which required the City Council to approve the ballot item *following* the public hearing. The Vermont Superior Court ruled that the City's actions were consistent with TIF Rule 1003.1 (public hearing may be held in conjunction with, or after, the ballot item is considered by the municipal legislative body), which conflicts with TIF Rule 718. The Court concluded that "even if there was a violation of Rule 718, the City substantially complied with the Rule. It provided a detailed informational notice to voters and held an appropriately warned public hearing prior to the public vote." Ultimately, the Superior Court found that the issues raised by the lawsuit were insufficient to void the voting results. This court decision was not appealed. Thus, the Vermont Supreme Court did not rule on the level of noncompliance that would invalidate a public vote on TIF financing or require municipalities to take steps to correct deficiencies.

  VEPC determined that the City had violated TIF Rule 718. In February 2017, per 32 V.S.A. §5404a(j)(2)(B), the Secretary of the Agency of Commerce and Community Development (ACCD) issued a decision in connection with VEPC's finding and concluded that the finding was not based on evidence of an improper reduction in the amount due to the Education Fund and required no further action.[20]

[19] 24 V.S.A. 1894(i) and TIF Rule 1003.2

[20] Secretary of ACCD letter dated February 6, 2017 and decision dated February 6, 2017.

The Secretary also acknowledged an inconsistency between TIF Rule 718 and 1003.2.2 (requires ballot item be approved by municipal legislative body prior to the public vote but does not address timing with respect to the public hearing). VEPC voted to require the rulemaking process be initiated to amend the TIF Rules to reconcile the inconsistency. A December 2022 working draft of revisions to the TIF Rule proposes removal of TIF Rule 718. The working draft maintains the requirement for the municipal legislative body to approve the ballot item prior to the public vote and specifies that the required public hearing may be held in conjunction with, or after, a meeting at which the ballot item is considered by the municipal legislative body.

Statute and the TIF Rule provide for an enforcement process in the event of noncompliance but do not specify a particular remedy for deficiencies in information provided to voters and errors in public vote processes.[21] As a result, it isn't clear what level of noncompliance would invalidate a public vote or require municipalities to take steps to correct deficiencies. In the instance of the 2016 compliance violation, the Secretary of ACCD concluded no action was necessary and the Superior Court concluded that "even assuming Taxpayers could establish all four of its alleged irregularities related to placing the question on the ballot, those procedural and technical errors taken together would not be sufficient to invalidate the election." If these outcomes are not the intent of the Legislature, clarification of statute or legislatively mandated TIF Rule changes may be in order.

Debt Issued for Various Improvements

From the $37,916,610 authorized, the City issued $15,837,610 of bonds and other financing instruments through December 31, 2019, the end of a five-year extended borrowing period that began January 1, 2015, per Act 80 (2013).

Act 134 (2016) provided for a separate extended borrowing period of 6.5 years beginning January 1, 2015 (ending June 30, 2021) for debt to pay for improvements in support of anticipated private redevelopment of three properties (e.g., the mall properties) in the WFT TIF District. However, the extension is subject to the City submission to VEPC of a construction contract executed by the owner of the mall properties for not less than $50 million of private development. Acts 175 (2020) and 73 (2021) extended this borrowing period to June 30, 2023, maintaining the

[21] 32 V.S.A. 5404a(j)

requirement for submission of an executed construction contract.[22] As of the date of this report, the City has not submitted an executed construction contract to VEPC.

See Table 3 for principal, interest, and types of debt issued and the improvement projects financed with the debt per the City's records.

Table 3: Principal, Interest, Type of Debt Issued, and Improvement Project Financed Per City

Date Debt Executed	Principal	Interest	Type	Improvement Project Financed, per City
10/18/2011	$436,610	$22,348	Lease financing	College Street Parking Garage
7/31/2014	$7,800,000	$1,143,738	VMBB bond	WAN, Champlain Sailing Center, Bike Path, Waterfront Park, and Moran Frame
9/11/2014	$2,091,000	$206,383	HUD Sec. 108 Loan	Moran Frame
11/28/2018	$1,150,000	$195,286	General Obligation bonds	ECHO Sustainability Park and Burlington Harbor Marina
12/20/2019	$4,360,000	$573,369	General Obligation bonds	Moran Frame and Great Streets
Totals	**$15,837,610**	**$2,141,124**		

Inadequate Tracking of Improvement Costs Financed with TIF Debt

Per TIF Rule 1002, recordkeeping for a TIF district must include an accounting of all district improvements, including total cost.

However, the City's accounting and other records did not clearly identify the amount of TIF improvement costs paid for with TIF debt for WAN, Champlain Sailing Center, ECHO, Burlington Harbor Marina, Bike Path, Waterfront Park, and Moran Frame projects. Some project-specific accounts were established in the accounting system, but these only capture a partial accounting of TIF financed costs for a few projects. The accounts weren't in place for the entire period and were used inconsistently. In addition, the City used at least three different approaches to record use of TIF debt which furthered obscured tracking by project.

22 Per Act 73 (2021), the Legislature extended borrowing periods for all TIF districts due to the COVID-19 pandemic. The WFT TIF District borrowing period for the Great Streets improvement associated with CityPlace was extended to June 30, 2023, subject to submission of private developer's executed construction contract to VEPC.

The City used more than one fund (in this instance, we use "fund" to refer to different silos or checkbooks governments use to track and report on revenue sources allocated for specific purposes) for some projects and recorded multiple projects in a single fund without establishing a documented, systematic approach to identifying costs and debt by project. This failure obscured information about improvement project costs and debt.

Project managers used spreadsheets to track costs and funding sources, but the spreadsheets were not complete and varied in content as project managers turned over and successor project managers developed their own spreadsheets.

Because the City was unable to produce accounting records that clearly presented the costs funded with TIF debt by improvement project, we conducted in-depth analysis to assemble the information from multiple sources such as the requisitions required to be submitted to the VMBB prior to release of the $7.8 million bond proceeds to the City.

Our review of the requisitions (lists of invoices the City represented were eligible to be paid for with TIF debt) for the $7.8 million VMBB bond uncovered significant problems. Some invoices had been submitted twice and the City's accounting records showed several other invoices had already been paid for with federal grants. We also questioned whether payroll costs for the Department of Public Works (DPW) WAN project manager were eligible to be paid with TIF debt. The City had hired both design engineers and construction management engineers and it wasn't clear that using TIF debt to pay for the City's project manager payroll costs was warranted.

We raised these concerns to City personnel. In response, over several months, a former City capital projects director worked part-time to uncover all problematic costs submitted to VMBB and to identify "replacement" costs to resubmit to VMBB. **In total, the City determined that about $1.8 million of $7.8 million in the requisitions was of questionable eligibility. Specifically, $1.4 million of duplicate invoices and invoices that had already been paid for with federal grants, and $390,000 of DPW project manager payroll costs needed to be removed from the requisitions.**

The following weaknesses underlie the City's struggle to produce records showing costs funded with TIF debt by project, the City's errors in the VMBB requisitions, and confusion regarding the sources of funding for various TIF improvement projects:

- Failure to establish a documented, centrally controlled, systematic approach to accounting for and tracking improvement costs funded with TIF debt.
- Poor communication between project managers and the City's finance department, and project manager turnover.

Each year from FY2017 to FY2020, the City's financial statement audit firm flagged incomplete capital project accounting as a weakness and recommended in-depth analysis of the accounting records to produce life-to-date reports for capital projects. See Appendix IV for the audit firm comment from FY2017. In April 2020, the City hired a consulting firm to reconcile project costs incurred through FY2020. However, the reconciliations only addressed capital projects *outside* the TIF district. City personnel explained that capital projects outside the TIF district were prioritized.

The audit firm also repeatedly recommended that the City establish a comprehensive framework for tracking project costs and debt in the general ledger accounting system (e.g., account structure) but the City did not do so until 2022.

In May 2021, the City contracted with a consulting firm with experience administering TIF districts, and this firm will assist with overseeing the assessment of eligible costs and tracking the use of debt proceeds to specific TIF projects. The City has now documented the procedures that will be used going forward, including the consulting firm's role.

$173,056 of Costs Tested Were Ineligible

We selected and examined $10.9 million of improvement costs from FY2011 to FY2021 (80 percent of total costs financed with TIF debt) using the corrected invoice listing and various other City records. We concluded that most were eligible TIF district improvements and related costs. The nature of the costs aligned with those disclosed in public notices provided to municipal voters in advance of public votes on TIF district debt such as construction of roadways, streetscape, stormwater, wastewater, and parking lots and for professional services such as engineering design. In addition, these types of costs fit within the statutory and TIF Rules definition of improvements and related costs.

Table 4 presents the costs funded with TIF debt by TIF improvement project compiled from various City records, amount tested and eligible versus ineligible costs.

Table 4: By Project, Costs Funded with TIF Debt, Costs Tested and Eligible/Ineligible Costs

Project	Timeframe	Costs Funded with TIF Debt	Total Costs Tested	Eligible Costs	Ineligible Costs
Moran Frame	Not complete – design commenced FY2019	$3,624,225	$3,398,706	$3,398,706	-
Bike Path	FY2014 to FY2019	$3,145,364	$2,165,150	$1,992,094	$173,056
Waterfront Access North	FY2013 to FY2019	$2,991,427	$2,098,549	$2,098,549	-
Waterfront Park	FY2015 to FY2019	$970,891	$853,668	$853,668	-
Burlington Harbor Marina	FY2019 to FY2020	$810,424	$659,751	$659,751	-
Great Streets – Cherry and Bank Streets	Not complete – design commenced FY2018	$801,000	$703,548	$703,548	-
ECHO Sustainability Park	FY2019 to FY2020	$500,000	$471,206	$471,206	-
College Street Garage	FY2011	$436,610	$436,610	$436,610	-
Champlain Sailing Center	FY2015 to FY2019	$312,774	$70,000	$70,000	-
	Totals	**$13,592,715**	**$10,857,188**	**$10,684,132**	**$173,056**

The $173,056 noted in Table 4 was for bike path rehabilitation costs which the City did not provide adequate evidence to demonstrate that the work was for segments of the bike path inside the TIF district boundaries. Thus, the costs were not eligible to be financed with TIF debt. However, the VMBB bond was used to pay for these costs.

The City may only use incremental property tax revenue to repay TIF debt used for eligible TIF improvement costs. **Since $173,056 of the VMBB bond paid for ineligible costs, this amount of the principal and associated interest may not be repaid with incremental property tax revenues. Instead, the City must repay this portion with non-TIF resources such as municipal property tax revenue.**

The last principal payment of $780,000 for the VMBB bond is scheduled in 2025. To ensure that the City avoids using incremental property tax revenue to repay the portion used for ineligible costs, VEPC could add a procedure to its annual monitoring for the WFT TIF District to ensure that other City funds, not tax increment, are used for $173,056 of principal and associated interest.

Objective 2(a): More than $1.5 Million of Errors in Tax Increment Calculations and Incorrect Amounts Paid to State Education Fund Most Years

From FY2011 to FY2021, the City kept $24,719,361 of incremental property tax revenue ("tax increment") in its WFT TIF Fund to pay for TIF district debt and related costs. However, this amount was incorrect because of $1.5 million in errors in the City's tax increment calculations. Some errors caused the City's calculation to yield more tax increment than existed (i.e., overcalculated the amount of tax increment). Other errors meant the City's calculation produced less tax increment than it should have (i.e., undercalculated the amount of tax increment). Overcalculations may cause the City to take municipal tax revenue from the City's main operating fund, the General Fund, and put the revenues into the WFT TIF Fund when it's not necessary. Conversely, undercalculations result in education property tax revenue being left in the General Fund when they belong in the WFT TIF Fund. **Overcalculation errors amounted to $807,656 and undercalculation errors totaled $755,101. In FY2021, the City recorded a $90,272 adjustment to reduce tax increment in the WFT TIF Fund because VEPC questioned the accuracy of the FY2020 tax increment calculation. Net of the errors and the adjustment, the City's General Fund owes the WFT TIF Fund $37,717.**

The City's errors were so numerous and of so many different types, it is clear a new process is required to reduce the risk of significant errors in the future. In May 2021, the City contracted with a consulting firm with experience administering TIF districts, and this firm will manage the City's tax increment calculation going forward. **Based on the current two-year contract, these services will add $100,000 of previously unanticipated costs.**

During the same period, in seven out of the nine years a payment was required, the City remitted the incorrect amount of education tax increment to the State Education Fund; ranging from $721 to $44,205**. In some years the City overpaid and in other years the City underpaid, with the net effect of $197,510 owed to the State Education Fund.** Commencing in FY2016, the determination of the Education Fund payment was automated via the State's Grand List system, but various methodological and data errors caused it to fail. The Department of Taxes Property Valuation and Review (PVR) division has identified other errors in the City's grand list values, which the system vendor determined could be related to problems with the custom coding for the WFT TIF District.

The City also misclassified five WFT TIF district parcels as tax exempt at various points. One of these properties, Waterfront Park Boathouse, continues to be treated as tax exempt. Because of this misclassification, the City forfeited $94,116 and $31,782 of incremental education and municipal property taxes respectively. The Tax Department advised that Vermont municipalities do not have any statutory authority to retrospectively levy property taxes on properties erroneously misclassified as tax-exempt. Thus, no adjustment may be made to tax increment. When property taxes are not collected and no tax increment is allocated to the TIF Fund, it lengthens the period of TIF debt repayment and delays the time when the State Education Fund receives education tax revenues in full.

Numerous Errors in Tax Increment Calculation

The City's annual calculation of the amount of incremental property tax revenue that could be kept to pay for WFT TIF District debt and related costs was rife with errors. Combining over and under-calculations, the City made from one to seven errors in each year of the audit period and the effect of the errors ranged from $457 to almost $250,000. Cumulatively, the value of all errors exceeded $1.5 million but largely offset. In response to VEPC questioning the accuracy of the FY2020 calculation, the City reduced tax increment recorded in the WFT TIF Fund in FY2021 by about $90,000. Net of the errors and FY2021 adjustment, $37,717 of municipal tax increment remained in the City's General Fund and is owed to the WFT TIF Fund.

From FY2011 to FY2021, the number of errors that the City made each year when calculating the amount of tax increment to retain ranged from one to seven and the City recorded the incorrect amount of tax increment in the WFT TIF Fund every year. Some errors led the City to calculate more tax increment than was generated by growth in property values (overcalculation), while others had the opposite effect, yielding less tax increment than was generated by property value growth (undercalculation). When tax increment is overcalculated, extra funds may be taken out of the General Fund and not available for the City's operating costs. When tax increment in the WFT TIF Fund is undercalculated, the City has not appropriately segregated tax increment revenues because state education property tax revenue may be left in the General Fund and the City may be using state education property tax revenue for its general operating costs. Table 5 presents the number of errors that led to an overcalculation of tax increment and the amount by fiscal year.

Table 5: Tax Increment Overcalculated: Number of Errors and Dollar Amounts

	Errors that Resulted in Tax Increment Overcalculation										
	FY'11	FY'12	FY'13	FY'14	FY'15	FY'16	FY'17	FY'18	FY'19	FY'20	FY'21
Number of Errors	1	1	3	2	2	0	4	4	5	5	2
Total Overcalculation $807,656	$2,782	$2,791	$69,246	$19,187	$408,225	--	$28,973	$60,691	$91,263	$98,413	$26,085

The largest error of the seven errors from FY2013 to FY2015, totaled $493,823 and was due to the City recording tax increment for the *Downtown* TIF District (another Burlington TIF District) in the *Waterfront* TIF District Fund. The accounting and records for these districts must be kept separate. Additionally, education property tax increment cannot be retained until debt is incurred for a TIF District, but the Downtown TIF was activated prematurely, several years before its first debt was issued in FY2016. Based on the information available to VTD and VEPC at the time, the discrepancy appeared to be caused by a technical issue with NEMRC software. Had this been the only error in these years, the City would have shorted its General Fund by $493,823. Because there were other errors in the calculation that partially offset the inclusion of Downtown TIF District increment, the City shorted its General Fund by $182,926 during the three-year period.

Another error occurred from FY2018 to FY2020 when the City failed to adjust its tax increment calculation methodology to reflect the *decrease* in property values due to the partial demolition of the Church Street mall. As a result, the City calculated tax increment that was $160,698 higher than actual incremental property taxes generated in the district overall. Because there were other errors in the calculation that partially offset these methodological errors, the City shorted its General Fund by $87,873 during the three-year period.

Table 6 shows the number of errors that led to an undercalculation of tax increment and the amount by fiscal year.

Table 6: Tax Increment Undercalculated: Number of Errors and Dollar Amounts

	Errors that Resulted in Tax Increment Undercalculation										
	FY'11	FY'12	FY'13	FY'14	FY'15	FY'16	FY'17	FY'18	FY'19	FY'20	FY'21
Number of Errors	0	0	0	4	4	4	1	1	1	2	3
Total Undercalculation $755,101	--	--	--	$157,855	$155,877	$157,140	$54,097	$48,099	$45,427	$68,968	$67,638

About $380,000 of the errors stemmed from the City's omission of a component of the municipal tax rate from the calculation of municipal tax increment over multiple years. In the absence of errors, municipal tax increment would have remained in the City's General Fund, rather than being added to the WFT TIF Fund. Failure to contribute an appropriate amount of *municipal* tax increment means that a greater proportion of *education* tax increment will be needed to repay TIF district debt, to the detriment of the State Education Fund. Because this error spanned multiple years in which there were other offsetting errors, the net effect is the City's General Fund owes the WFT TIF Fund $22,264.

With the passage of Act 80 (2013), 24 V.S.A. §1896 explicitly required that municipalities use *all* municipal tax rates in the calculation of incremental municipal property tax revenue notwithstanding any charter or other provision. Burlington's municipal tax is comprised of multiple components, including general city operation, streets, police/fire, parks, library, etc. (See Appendix VII for a sample of the tax bill showing tax rate components). The tax rate omitted is levied on nonresidential commercial property owners within the City's Downtown Improvement District (DID), which is not to be confused with either of Burlington's TIF districts. Some of the properties, assessed with the DID tax are within the WFT TIF district. Correspondence from 2017 shows VEPC's Executive Director advised that the City should include the DID tax rate and the director did not respond when the City sent a second e-mail repeating its view of the matter. Subsequently, the City continued to exclude the DID tax rate, rejecting the Executive Director's determination. During this audit, consistent with the VEPC Executive Director's conclusion, the AGO determined that the exemption cited by the City does not apply and the DID tax rate must be included in the calculation of municipal tax increment. See Appendix III for the AGO memorandum.

Additional detail regarding tax increment calculation errors may be found in Appendix VI.

Several Errors in State Education Fund Payment Calculation

The premature activation of the Downtown TIF District impacted the State's parallel automated process which determines the amount of education property tax revenue municipalities owe the State Education Fund. As a result, the City underpaid the State Education Fund by more than $300,000 during the three-year period (FY2013-FY2015). This error was uncovered in FY2016 by PVR and VEPC, and the City repaid the State Education Fund.

A property that should have been recognized as a taxable parcel from the creation of the TIF district was not included as such in the 2017 certified original taxable value (OTV) even though this mistake was known to the City at that time. We brought the error to the City's attention during our first WFT TIF District audit and recommended the City work with PVR to accurately reflect the property's tax status. In FY2013, the City commenced treating the property as taxable but failed to reflect this in the OTV when the TIF Rule required municipalities, VEPC, and PVR to certify OTV. The WFT TIF OTV should have been increased by $847,602, effective FY2017 (see Appendix VI for detail). This error accounts for $83,786 of the amount owed to the Education Fund.

Since FY2011, the City has been required to pay the State Education Fund 25 percent of the incremental education property tax revenue generated from growth above 2010 property values for all but two properties in the TIF district. In seven out of the nine years since payments commenced, the City remitted an incorrect amount of education tax increment to the State Education Fund. The first three years, the error resulted from the City's manual miscalculations and the City overpaid $5,430.

In FY2016, the calculation of the amount owed and the City's payment of a portion of the education tax increment to the State Education Fund was automated via NEMRC. The automated process functioned correctly the first two years, in the last four years the City consistently underpaid its education tax liability, due to errors in the automated methodology.

Because of errors we noted in the NEMRC system, PVR performed additional analyses of the City's grand list data uploads via NEMRC and found further inconsistencies in the grand list values between the City records and the values transmitted to PVR. In total, between the errors we found and those identified by PVR, the City underpaid the State Education Fund by $119,154.

The City remitted $30,311 of education tax increment to the State Education Fund but owes $197,510 to the State Education Fund because of the errors in the processes used to determine the amount owed. The State Education Fund was overpaid from FY2013 to FY2015 and underpaid from FY2018 to FY2021. From FY2013 to FY2015, the City recorded 100 percent of tax increment in the WFT TIF Fund and the payment to the State Education Fund was made from the WFT TIF Fund. Since the WFT TIF Fund was the source used when the overpayments occurred, the City owes $5,430 of education tax increment to the WFT TIF Fund. Commencing in FY2016, the payment of education tax increment no longer flowed through the WFT TIF Fund. Rather, it was from the General Fund. When the City underpaid the State Education Fund, the City kept education tax increment in its General Fund and thus the General Fund must be the source used to repay the State Education Fund $197,510.

Personnel at the City, PVR, and NEMRC were aware of one issue with the NEMRC data, but not the issues uncovered during the audit. A NEMRC senior official explained that the WFT TIF District's unique tax increment calculation has been difficult to implement, and that significant custom coding has occurred during the years for this TIF district. It appears that some of the custom coding was incorrect and led to the issues found during the audit. The City and PVR believed that the NEMRC system produced results that could be relied on for the WFT TIF District and did not have processes in place to verify the appropriateness of the data transmitted to PVR. Since the NEMRC grand list system is being replaced during FY2023, it may not make sense to expend further resources attempting to identify and resolve the problems in the automated process. PVR plans to manually check the accurate transmission of the NEMRC data and the Education Fund payments. In addition, the City should implement a process to verify that the NEMRC system transmits the appropriate grand list data to PVR.

The fundamental reason underlying these errors is the City's failure to recognize and manage the complexities involved in ensuring the appropriate amount of education and municipal tax increment is retained in the WFT TIF Fund and the correct amount of education tax increment is remitted to the State Education Fund. In addition, PVR failed to require resolution of the known NEMRC data issue. While collectively the City personnel involved in the tax increment calculation and Education Fund payment processes are knowledgeable about these aspects of the TIF district administration, the City did not have documented procedures and no systematic approach to reviewing all calculation components. Effective May 2021, the City has a two-year contract with a consulting firm with experience administering TIF districts, and this firm will manage the calculation of the amount of tax increment that may be kept in the WFT TIF District.

Misclassification of Tax Status

The City misclassified five WFT TIF district parcels, as tax exempt at various points and one property, Waterfront Park Boathouse continues to be treated as tax exempt. The table below describes the City's tax treatment of each of the parcels during the audit period.

Table 7: Tax Statuses of Five Parcels

	Description of Parcels	Fiscal Years										
		2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
1	Land/75 Cherry St parking	Tax Exempt	Tax Exempt	Taxable	Taxable	Taxable	Taxable	Taxable	Taxable	Taxable	Taxable	Taxable
3	Land/Westlake parking	Tax Exempt	Tax Exempt	Tax Exempt	Taxable	Taxable	Taxable	Taxable	Taxable	Taxable	Taxable	Taxable
2	Land/Waterfront Housing	Tax Exempt	Tax Exempt	Tax Exempt	Tax Exempt	Taxable	Taxable	Taxable	Taxable	Taxable	Taxable	Taxable
4	Land/Hotel VT	Tax Exempt	Tax Exempt	Tax Exempt	Tax Exempt	Taxable	Taxable	Taxable	Taxable	Taxable	Taxable	Taxable
5	Waterfront Park Boathouse[a]	Tax Exempt	Tax Exempt	Tax Exempt	Tax Exempt	Tax Exempt	Tax Exempt	Tax Exempt	Tax Exempt	Tax Exempt	Tax Exempt	Tax Exempt

[a] Waterfront Boathouse is the location of 'Splash' restaurant

We consulted with the Vermont Department of Taxes on whether in cases of tax status misclassification there should be any retrospective assessment of property taxes. The Department advised that Vermont municipalities do not have the statutory authority to retrospectively levy property taxes on properties erroneously misclassified as tax-exempt.

As no property taxes can be raised retrospectively, we do not recommend any adjustments to the WFT TIF Fund tax increment balances. We estimate that during the years of tax status misclassification, the City forfeited $94,116 and $31,782 of education and municipal tax increment, respectively.

Waterfront Park Boathouse ("Boathouse"), which is owned by the City, has not been assessed as a separate parcel. The AGO advised that although the Boathouse is owned by the City, it is leased to a private entity for commercial purposes; hence it should be taxed. See Appendix III for the opinion.

Objective 2(b): Unauthorized Use of More Than $1 Million of Tax Increment for Direct Payment of Improvement Project Costs

The City's accounting records show that from FY2011 to FY2021, about $22.6 million of tax increment was used, including more than $1 million to fund WAN and Bike Path project costs in FY2014 and FY2015. Tax increment may be used to fund project costs if authorized by municipal voters, but in this case, the City exceeded the combined amount of debt and tax increment authorized to fund improvement projects. Because of the unauthorized use of tax increment, the City owes the WFT TIF District Fund more than $1 million. Absent repayment, at the end of the WFT TIF District life when excess tax increment (cumulative tax increment less authorized uses) is distributed to the State Education Fund and the City's General Fund as required, the amount due to the State Education Fund could be understated by as much as $757,655.[23] The City acknowledged that the use of tax increment for direct payment of project costs was in error and has indicated that it will repay the WFT TIF District Fund. Inadequate project accounting records, inconsistent accounting processes, failure to systematically track the source of funds for improvement costs by project, and project manager turnover at the Department of Public Works and the Department of Parks and Recreation explain why more than $1 million of tax increment was used despite a lack of voter authorization.

The remainder of the tax increment used from FY2011 to FY2021 was mostly for allowed expenditures such as $20.3 million of TIF debt service payments (principal and interest). City Council approval was obtained to reimburse CEDO for $784,949 of the City's personnel costs and various professional services costs (known as related costs) through FY2020.[24] An additional $178,098 was charged directly to the WFT TIF District Fund which was not subject to City Council approval. Of this

23 We estimate the maximum as 68 percent of $1,114,198. The percent is the proportion of education tax increment to the total tax increment each year from FY2019 to FY2021.

24 In FY2021 the City Council authorized additional $51,079, however, the City has not yet used tax increment for these expenditures.

amount, we concluded that $37,598 was primarily for the *Downtown* TIF District and not an eligible cost of the WFT TIF District. The City had established processes to monitor outstanding debt and debt payments due which supported appropriate use of tax increment for debt repayment. However, the City was inconsistent in obtaining City Council approval for related costs and this lack of oversight may explain the inappropriate use of WFT TIF district tax increment for costs associated with the Downtown TIF District.

Allowable and Ineligible Uses of Tax Increment

Vermont TIF statutes and TIF Rule allow tax increment to be used for 1) repayment of TIF debt that financed eligible improvements and related costs and 2) direct payment of improvements and related costs, as authorized.

In 2012 and 2014, municipal voters approved $15,650,000 of financing. Since the City issued $14,600,000 of debt from this amount, $1,050,000 was available for related costs. An additional $903,000 for related costs was authorized in 2016.

Table 8 summarizes our assessment of allowed and ineligible uses of the WFT TIF District tax increment.

Table 8: Tax Increment Allowable and Ineligible Uses

Description of Uses	Total Allowable	Total Ineligible	Total Uses
Debt payments (principal and interest)	$20,258,932		$20,258,932
CEDO Personnel Costs	$474,696		$474,696
Professional Consultants Costs	$308,158	$2,095	$310,253
Act 80 Education Fund Payments[a]	$200,000		$200,000
25% Education Fund Payments[b]	$17,936		$17,936
Other Miscellaneous Costs	$110,002	$68,097	$178,098
Improvement Project Costs	--	$1,114,198	$1,114,198
Total Expenditures	**$21,369,724**	**$1,184,390**	**$22,554,113**

[a] The Legislature required payments to settle the findings of our first audit of the WFT TIF District.
[b] This line-item total only includes direct Education Fund payments made by the City in FY2013 – FY2015

Debt payments: Principal and interest payments were for authorized debt, but we also found that in FY2021 the City mistakenly used General

Fund resources to pay interest for the VMBB bond. This should have been paid with the tax increment. As a result, the WFT TIF Fund owes the City General Fund $46,457. The City had established processes to monitor outstanding debt and debt payments due which mostly supported appropriate use of tax increment for debt repayment.

CEDO Personnel and Professional Consultants Costs: City Council approved the use of tax increment for $784,949 of CEDO personnel and consultant costs through FY2020. Another $51,079 was approved in FY2021 but had not yet been used. Per TIF Rule 706, municipal personnel costs may be paid but only with municipal tax increment. Most municipalities are limited to using the portion of municipal tax increment that is not committed to payment of TIF district debt (generally 25 percent). There is no such limitation for the WFT TIF District.[25]

Since the City is using tax increment for CEDO personnel costs and only the municipal tax increment may be used for this purpose per TIF Rule, it is important that the City distinguish between the use of education and municipal tax increment in its accounting records. While the Finance Department uses an Excel spreadsheet to track the amount of education and municipal tax increment that is retained each fiscal year in the TIF District, there is no mechanism to track the use of these distinct components. In the absence of such mechanism, at the termination of the TIF district, the City will be unable to correctly identify the portion of any excess remaining tax increment that must be distributed to the State Education Fund versus the City's General Fund.

Other Miscellaneous Costs: The City also used tax increment for another $178,098 of related costs that was not approved by City Council. We concluded that $37,598 was not eligible to be paid with WFT TIF District tax increment, including $30,788 of *Downtown* TIF District expenditures. In addition, tax increment was used to reimburse $32,594 of City Attorney staff costs. Per a City official, these costs will be reversed, and the funds will be returned to the WFT TIF Fund. The failure to consistently obtain City Council approval for related costs may explain the use of WFT TIF tax increment for the ineligible costs, associated with the Downtown TIF District and the internal staff attorney costs.

Improvement Project Costs: The City issued $14,600,000 of debt to pay for improvements on the waterfront, including WAN and the Bike

25 TIF Rule 706 specifies that because this TIF district is required to retain 100 percent of its municipal tax increment, there is no limitation on use for municipal personnel costs.

Path project, as approved by municipal voters in 2012 and 2014. This amount represents the maximum of debt and direct use of tax increment that the City could use to fund public improvements in the waterfront area of the WFT TIF District. However, in addition to issuing $14,600,000 of debt, the City also used $1,114,198 of tax increment to fund WAN and Bike Path improvement project costs in FY2014 and FY2015, exceeding the amount authorized by municipal voters. As a result, the City must repay this amount to the WFT TIF Fund. Absent repayment, at the end of the TIF district life when excess tax increment is distributed to taxing authorities as required, the State Education Fund portion could be understated by up to $757,655 (68 percent of $1,114,198). The City has acknowledged the error and indicated the WFT TIF Fund will be repaid with General Fund monies.

The City's difficulties substantiating that debt proceeds were used for eligible TIF improvements, as described in Objective 1, underlie *this* error as well. Namely, these are poor recordkeeping, project manager turnover, and inadequate communication between the departments managing the WAN and Bike Path improvement projects and the finance/accounting group within the City Clerk/Treasurer's office.

According to the City's audited financial statements for the period ending June 30, 2021, the WFT TIF Fund has an ending balance of $2,459,889. Considering the errors in the City's tax increment calculation and other adjustments identified in the audit, the ending balance should be $3,640,963. Of this amount, $2,398,893 is education tax increment and $1,242,070 is municipal tax increment.

Other Matters

During the life of the WFT TIF District, the Legislature has codified numerous extensions and exemptions which added complexity to the administration of this TIF district. Some of the issues we uncovered during the audit are directly related to these complexities. At times, these modifications present unanswered questions. Most recently, two issues arising from Act 134 (2016) could benefit from clarification.

Treatment of Surplus Tax Increment Accumulated through FY2025

Act 45 (2011) Sec. 16(b)(1) required the termination of the WFT TIF District at the end of FY2025 and stipulated that surplus tax increment be distributed at that time to the City of Burlington and the State Education Fund in proportion to the relative municipal and education tax rates.[26]

In 2016, when the City requested that the Legislature extend both the borrowing period and tax increment retention period for three properties in the WFT TIF District, City officials acknowledged that the WFT TIF District end date was FY2025. Additionally, officials asserted that redevelopment of the CityPlace property alone would produce sufficient tax increment to service TIF debt for the public improvements (e.g., Great Streets) required to support the redevelopment.

Consistent with the City's request, Act 134 (2016) extended the City's borrowing period and retention of tax increment for three properties.[27] However, it did not address whether surplus accumulated through FY2025 could be kept and used to repay TIF debt incurred during the extended borrowing period.

The City's 2016 amendment to its District Reconciliation Report asserted that private CityPlace development would generate sufficient tax increment to pay for all debt issued for the public infrastructure project and therefore, did not rely on surplus accumulated through FY2025 to pay for any of the debt.

Contrary to this, in a 2019 substantial change request filed with VEPC, the City indicated that the private development project had changed, and the City now intended to utilize any surplus accumulated through FY2025 in addition to tax increment generated by the three properties to pay debt issued to finance public infrastructure improvements associated with CityPlace. VEPC deferred consideration of the City's substantial change request until the City provides updated information on items such as the public improvement and debt service.

ACCD General Counsel has advised VEPC that adequate support exists for Burlington's plan to use surplus tax increment accumulated through FY2025 for paying debt associated with the Great Streets public infrastructure improvement. However, the General Counsel's analysis did not address Act 45(2011) Sec. 16 (b)(1) which explicitly stated that the Waterfront TIF district ends in FY2025, and that surplus tax increment *must* be distributed at that time.

[26] In a September 9, 2009, letter to the Chair of the Joint Fiscal Committee, the City's mayor defined surplus as tax increment in excess of amounts pledged for payment of financing for public improvements.

[27] Act 134 (2016) amended Act 80 (2013) Sec. 18 which had extended the City's borrowing period to December 31, 2019 and specified that the extension of the borrowing period did not extend any period that municipal, or education tax increment could be retained.

If this issue isn't addressed timely, the Education Fund may not receive tax increment revenues when the Legislature intended. By June 30, 2025, all Waterfront TIF district debt issued to date should be paid in full and the surplus education and municipal tax increment could be about $800,000 (tax increment less debt service payments and related costs).[28] This amount could be higher or lower as projections of tax increment are subject to multiple variables such as property value and tax rates. If the City does not distribute the surplus education tax increment in FY2025, property taxpayers throughout the State will collectively pay to replace these funds.

Tax Increment Calculation for Three Properties

Act 134 (2016) extended the City's retention of tax increment for three properties to FY2035 but did not address the following:

- Base value to be used to calculate incremental value for three properties during the extended tax increment retention period (FY2026 to FY2035),
- Percent of education tax increment that may be retained,
- Percent of education tax increment required to be paid to the State Education Fund during the extended period, if any, and
- Percent of municipal tax increment required to be allocated to the WFT TIF Fund.

Lacking these details, it's not clear how tax increment should be calculated and the percent that should be retained during the extended retention period.

Clarification of these issues will ensure that the City manages the Waterfront TIF District consistent with the Legislature's intent and that the State Education Fund receives education tax increment when it is supposed to.

Conclusion

From FY2011 through FY2021 the City completed seven projects within its WFT TIF District, including improvements to Waterfront Park, Champlain Sailing Center and the Burlington Bike Path. However, our audit demonstrated a slew of problems in the City's administration of the District including disarray in the accounting records for

[28] The City does not have a projection of tax increment through FY2025, so we developed an estimate using actual incremental value and tax rates for FY2022, preliminary incremental value and actual tax rates for FY2023. Tax increment for FY2024 and FY2025 was calculated assuming an average growth rate from FY2011 to FY2023. We subtracted actual principal and interest payments on outstanding debt and estimated about $445,000 of related costs.

improvement project costs and errors in the calculation of the amount of tax increment that could be retained in the WFT TIF Fund, and the amount required to be paid to the State Education Fund. As a result, the City's General Fund owes the WFT TIF District about $1.2 million and the State Education Fund more than $197,000. In addition, the City must use about $173,000 of its general operating funds to pay TIF debt since this amount of debt was used to pay for costs that weren't eligible improvement costs.

The City has contracted with a consulting firm experienced with TIF district administration, and this firm will assist with overseeing the assessment of eligible improvement costs and tracking the use of debt proceeds to specific TIF projects and will also calculate tax increment going forward. These steps are intended to prevent recurrence of the problems uncovered during the audit.

Recommendations

We make the recommendations in Table 9 to the City of Burlington.

Table 9: Recommendations and Related Issues

Recommendation	Report Pages	Issue
1. Analyze accounting and other records and compile data, by project, of improvement costs and the TIF debt that funded the costs. Expedite the analysis for Moran Frame and Great Streets as these projects are not complete.	16 - 18	The City's accounting and other records did not clearly identify the amount of TIF improvement costs paid for with TIF debt for WAN, Champlain Sailing Center, ECHO, Burlington Harbor Marina, Bike Path, Waterfront Park, and Moran Frame projects. Some project-specific accounts were established in the accounting system, but these only capture a partial accounting of TIF financed costs for a few projects. The accounts weren't in place for the entire period and were used inconsistently. Each year from FY2017 to FY2020, the City's financial statement audit firm flagged incomplete capital project accounting as a weakness and recommended in-depth analysis of the accounting records to produce life-to-date reports for capital projects.
2. Document and implement a procedure to ensure tax increment is not used for $173,056 of VMBB principal and associated interest.	19	The City used $173,056 of VMBB bond proceeds for bike path rehabilitation costs for which the City did not provide adequate evidence to demonstrate that the work was for the segments of the bike path inside the TIF district boundaries. Thus, the costs were not eligible to be financed with TIF debt and this portion of the VMBB bond may not be repaid with tax increment.
3. Transfer $37,717 from the General Fund to the WFT TIF Fund.	21	Net of numerous errors in the City's tax increment calculation and FY2021 adjustment, $37,717 of municipal tax increment remained in the City's General Fund and is owed to the WFT TIF Fund.

Recommendation	Report Pages	Issue
4. Include the DID tax in the calculation of municipal tax increment for nonresidential commercial properties.	23	About $380,000 of the errors in the tax increment calculation stemmed from the City's omission of a component of the municipal tax rate from the calculation of municipal tax increment over multiple years. With the passage of Act 80 (2013), 24 V.S.A. §1896 explicitly required that municipalities use all municipal tax rates in the calculation of incremental municipal property tax revenue notwithstanding any charter or other provision.
5. Adjust the WFT TIF OTV by $847,602 to correct the omission of a taxable parcel.	24	A property that should have been recognized as a taxable parcel from the creation of the TIF district was not included as such in the 2017 certified original table value (OTV) even though this mistake was known to the City at that time. In FY2013, the City commenced treating the property as taxable but failed to reflect this in the OTV when the TIF Rule required municipalities, VEPC, and PVR to certify OTV.
6. Transfer $5,430 from the General Fund to the WFT TIF Fund.	24	From FY2013 to FY2015, the City recorded 100 percent of tax increment in the WFT TIF Fund and the payment to the State Education Fund was made from the WFT TIF Fund. Since the WFT TIF Fund was the source used when the overpayments occurred, the City owes $5,430 of education tax increment to the WFT TIF Fund.
7. Pay $197,510 from the City General Fund to the State Education Fund.	25	Commencing in FY2016, the payment of education tax increment no longer flowed through the WFT TIF Fund. Rather, it was from the General Fund. When the City underpaid the State Education Fund, the City kept education tax increment in its General Fund and thus the General Fund must be the source used to repay the State Education Fund $197,510.
8. Implement a process to verify that the NEMRC system transmits the appropriate data to PVR.	25	A NEMRC senior official explained that the WFT TIF District's unique tax increment calculation has been difficult to implement, and that significant custom coding has occurred over the years for this TIF district. It appears that some of the custom coding was incorrect and led to the issues found during the audit. The City and PVR believed that the NEMRC system produced results that could be relied on for the WFT TIF District and did not have processes in place to verify the appropriateness of the data transmitted to PVR.
9. Separate the Boathouse from the Waterfront Park parcel and include it on the City grand list as a taxable property, effective April 1, 2023.	26	Waterfront Park Boathouse ("Boathouse"), which is owned by the City, has not been assessed as a separate parcel. The AGO advised that although the Boathouse is owned by the City, it is leased to a private entity for commercial purposes; hence it should be taxed.

Recommendation	Report Pages	Issue
10. Transfer $46,457 from the WFT TIF Fund to the General Fund.	28 - 29	Principal and interest payments were for authorized debt, but we also found that in FY2021 the City mistakenly used General Fund resources to pay interest for the VMBB bond. This should have been paid with the tax increment. As a result, the WFT TIF Fund owes the City General Fund.
11. Transfer $70,192 from the General Fund to the WFT TIF Fund.	29	We concluded that $37,598 of costs paid for with tax increment were not eligible to be paid with WFT TIF District tax increment, including $30,788 of Downtown TIF District expenditures. In addition, tax increment was used to reimburse $32,594 of City Attorney staff costs. Per a City official, these costs will be reversed, and the funds will be returned to the WFT TIF Fund.
12. Transfer $1,114,198 in to the WFT TIF District from the City General Fund.	29 - 30	The City used $1,114,198 of tax increment to pay for WAN and Bike Path improvement project costs in FY2014 and FY2015, exceeding the amount debt and tax increment municipal voters authorized for improvement costs.
13. Establish proper accounting to track education and municipal portion of the WFT TIF Fund balance.	29 - 30	According to the City's audited financial statements for the period ending June 30, 2021, the WFT TIF Fund has an ending balance of $2,459,889. Considering the errors in the City's tax increment calculation and other adjustments identified in the audit, the ending balance should be $3,640,963. Of this amount, $2,398,893 is education tax increment and $1,242,070 is municipal tax increment.

We make the recommendations in Table 10 to VEPC.

Table 10: Recommendations and Related Issues

Recommendation	Report Pages	Issue
1. Require the City to provide complete and accurate records of improvement costs paid for with TIF debt for each project.	16 - 18	See recommendation 1 to the City.
2. Add a procedure to the annual WFT TIF District monitoring that will ensure other City funds, not tax increment, are used for $173,056 of VMBB principal and associated interest payments.	19	See recommendation 2 to the City.

We make the recommendations in Table 11 to the Legislature.

Table 11: Recommendations and Related Issues

Recommendation	Report Pages	Issue
1. Amend statute to specify whether noncompliance with public information and public vote procedural requirements could invalidate a vote or require a municipality to take steps to correct deficiencies.	13 - 15	Statute and the TIF Rule provide for an enforcement process in the event of noncompliance but do not specify a particular remedy for deficiencies in information provided to voters and errors in public vote processes. In the instance of the 2016 compliance violation, the Secretary of ACCD concluded no action was necessary and the Superior Court concluded that "even assuming Taxpayers could establish all four of its alleged irregularities related to placing the question on the ballot, those procedural and technical errors taken together would not be sufficient to invalidate the election." If these outcomes are not the intent of the Legislature, clarification of statute or legislatively mandated TIF Rule changes may be in order.
2. Clarify whether the excess education tax increment is required to be distributed to the State Education Fund at the end of FY2025.	30 - 32	Act 45 (2011) Sec. 16(b)(1) required the termination of the WFT TIF District at the end of FY2025 and stipulated that surplus tax increment be distributed at that time to the City of Burlington and the State Education Fund in proportion to the relative municipal and education tax rates. Act 134 (2016) extended the City's borrowing period and retention of tax increment for three properties. However, it did not address whether surplus accumulated through FY2025 could be kept and used to repay TIF debt incurred during the extended borrowing period.
3. Clarify the following for the tax increment calculation for the three parcels commencing in FY2026: • Date to use to establish base value • Percent of education tax increment that is required to be paid to the State Education Fund • Percent of municipal tax increment, required to be contributed to the WFT TIF Fund.	32	Act 134 (2016) extended the City's retention of tax increment for three properties to FY2035 but did not address the details of the tax increment calculation including the percent of education tax increment that may be retained and whether any portion is required to be paid to the Education Fund.

Management's Comments

On January 12, 2023, the City's Chief Administrative Officer (CAO) provided written comments on a draft of this report. The CAO accepted many of the findings and agreed to take steps to implement most of the recommendations. These comments are reprinted in Appendix VIII. Our evaluation of these comments is in Appendix IX. On January 12, 2023, the Chair of VEPC and the Executive Director of VEPC provided written comments on a draft of this report. These comments are reprinted in Appendix X. The Chair and Executive Director agreed with the recommendations we made to VEPC.

For our first objective, we identified the statutory provisions and TIF Rules applicable to the Waterfront TIF district that address allowable types of debt, debt borrowing periods, and the authorization and approval of TIF debt.

We interviewed City officials to gain an understanding of the City's policies and procedures for authorizing, issuing, and tracking TIF debt.

We compiled a debt schedule for FY2011-FY202 which included a description of debt, repayment terms, total issued, total annual debt service, and outstanding principal balances as of FY2021. We determined the City's statutorily allowed debt borrowing periods and assessed whether the issued debt was a type of debt instrument allowed under the statutory and regulatory criteria.

To determine whether issued TIF debt from FY2011-FY2021 was properly authorized by voters, we evaluated whether the City adhered to required steps for warning public hearings and disclosing required information to municipal voters. In connection with the 2016 public vote, we reviewed a Vermont Superior Court ruling that concluded issues raised by a lawsuit were insufficient to void the voting results, a VEPC finding that the City had violated TIF Rule 718, and the Secretary of ACCD's decision that the City was in technical non-compliance with TIF Rule 718. Additionally, we obtained advice from the AGO as to whether the contingency in Act 134 (2016) Sec 9a(c) applies to all debt incurred for the three CityPlace parcels or only to debt incurred after December 31, 2019. .

We corroborated annual debt service from FY2011 through FY2021 per the general ledger to 1) the debt payment amount in the audited financial statements and 2) the debt amortization schedules according to official bond, COPs, and other debt documents and followed up on discrepancies.

To ensure compliance with Sec 72 of Act 190 (2008), we calculated the total debt repayment period for the original COPs issuances Series 1999A & 2000 and the refinanced COPs Series 2016A & 2016B to ensure the debt repayment period did not extend beyond 20-years from the date the debt was originally issued.

We identified the statutory provisions and TIF Rules relevant to eligible TIF improvements and evaluated whether the improvement projects were specified in the 2015 TIF district reconciliation submitted to VEPC or authorized by the Legislature.

We interviewed City officials regarding the system of policies, procedures and controls in place to track improvement costs by project and to monitor that TIF debt was used to pay for TIF improvements that were 1) authorized by municipal voters or the Legislature and 2) met the definition of improvements in statute and TIF Rules. We reviewed Melanson Heath's annual management letter comment for the audited financial statements from FY2017 to FY2021.

The City's general ledger project accounting records were incomplete and did not clearly identify improvements costs by project and the source of funding (e.g., TIF debt). In addition, the City's requisitions for the $7.8 million VMBB bond were not reliable and we assessed the City's revised list to verify that invoices were consistent with transactions recorded in the accounting system and had not already been paid with a federal grant. We used detailed general ledger reports, the City's revised list of invoices for the VMBB bond, and other project records to compile the improvement project expenditures and sources of debt funding for each improvement project by fiscal year from FY2011 to FY2021.

From general ledger reports and the City's revised VMBB invoice list, we selected a judgmental sample of improvement costs by project, which included individual invoices greater than $20,000 or $40,000 and all general ledger journal entries greater than $40,000 or $50,000.

We reviewed documentary evidence such as invoices, contracts, and requests for proposals. We assessed whether the costs 1) met the statute and TIF Rule definition of improvement, 2) the cost was for an authorized TIF improvement project, and 3) the City followed its procurement policy.

For our second objective, we identified the statutory provisions and TIF Rules relevant to the calculation and retention of tax increment by the Waterfront TIF district.

We interviewed City officials regarding policies, procedures and internal controls over monitoring the grand list and properties in the TIF district and calculating tax increment.

We reviewed the values of the certified OTV and 2010 base.

We reviewed completeness and accuracy of the education and municipal tax rates used by the City in their calculation of tax increment. We obtained advice from the AGO regarding the City's exclusion of the DID tax.

We recalculated WFT TIF's education and municipal tax increment for every period since FY2011 and compared the results with the amounts, calculated and reported by the City for its WFT TIF Fund.

We reviewed amounts paid to the Education Fund by the City either by direct payment or via form 411 exemption, calculated by the NEMRC system and submitted to PVR.

We traced tax increment according to the City's calculation to the general ledger and the City's Annual Financial Statements and identified Education Fund payments using the City's general ledger and the form 411.

To assess the reliability of the current values in the TIF Parcel Value Report, we interviewed City officials to understand how the City's Grand List is maintained and the source of data in the grand list. We also discussed how changes in property values were identified and adjusted in the grand list to ensure completeness and accuracy of properties in the TIF district.

We performed data testing to verify that all TIF district parcels were included in the tax increment calculation for all periods for both education and municipal parcels. We obtained advice from the AGO regarding tax status of certain properties.

To assess whether the City paid the required portion of education tax increment to the State Education Fund, we obtained property value data, including education list value, submitted to PVR by Burlington for the period from FY2011 through FY2021. We determined whether the reported amount of the TIF exemption for homestead and non-homestead properties was equal to 75 percent of the incremental property value in the TIF district for all non-hotel parcels since FY2011. We assessed whether the TIF exemption was excluded from the education list value and compared the education list value per the data submitted by the City to the education list value used by the Agency of Education to calculate Burlington's education tax liability. We followed up with NEMRC and PVR on discrepancies.

We identified the statutory provisions and TIF Rules that address the criteria applicable to determining the eligibility of TIF related costs for tax increment financing.

We interviewed City officials about policies, procedures, and internal controls in place for authorization and use of tax increment to pay related costs.

We judgmentally selected a sample of related cost payments from the general ledger TIF account detailed transaction records from FY2013 through FY2021. We evaluated whether the costs were within limits authorized by municipal voters and whether these expenditures were approved by the City Council. We reviewed documentary evidence provided by the City such as invoices and contracts to determine whether the costs met the definition of related costs, per the TIF statutes and TIF Rules. We also assessed whether the documentary evidence demonstrated that City officials had adhered to the necessary approval procedures.

We also identified other uses of tax increment and assessed whether the uses were allowed by TIF statutes and TIF Rules and whether the use was within the limits authorized by municipal voters.

We conducted this performance audit in accordance with generally accepted government auditing standards, which require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II
Abbreviations

ACCD	Agency of Commerce and Community Development
AGO	Office of Attorney General
BAN	Bond Anticipation Note
CEDO	Community and Economic Development Office
COP	Certificate of Participation
DPW	Department of Public Works
FY	Fiscal Year
HUD	United States Department of Housing and Urban Development
NEMRC	New England Municipal Resource Center
OTV	Original Taxable Value
PVR	Property Valuation and Review
SAO	State Auditor's Office
TIF	Tax Increment Financing
VEPC	Vermont Economic Progress Council
VMBB	Vermont Municipal Bond Bank
V.S.A.	Vermont Statutes Annotated
WAN	Waterfront Access North
WFT	Waterfront

Appendix III
Attorney General Office Memorandum

The AGO provided a memorandum responding to a request for advice on the taxability of certain properties within the WFT TIF District.

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ATTORNEY CLIENT COMMUNICATION
PRIVILEGED AND CONFIDENTIAL

To: Tanya Morehouse, Chief Auditor

From: Joshua R. Diamond, Deputy Attorney General
Michelle Anderson, Assistant Attorney General and Chief, General Counsel and Administrative Law Division

Re: Burlington TIF District – Taxability of Waterfront Properties and Downtown Improvement District (DID) Tax Rate

Date: May 16, 2022

This memorandum responds to a request for advice on the taxability of waterfront properties and application of certain statutes and the rule affecting Tax Increment Financing Districts ("TIF districts"). The opinions and analysis provided are based upon the facts and citations referenced herein.

<u>SAO Request 1</u>
Whether two properties owned by the City of Burlington have been appropriately exempted from education property taxes. The first property is land under Lake Champlain Sailing Center (CSC) which is leased to CSC and the second property is the Waterfront Boathouse which is leased to Splash Restaurant.

Based upon the information you provided, it appears that the land under CSC is exempt from property taxes, and the building leased to Splash Restaurant is taxable.

You have indicated that the City claims the properties are tax-exempt because they are municipally owned. However, the Vermont Supreme Court has long held that municipal property is exempt from property taxation only if it is devoted to a public

1

use. *Stiles v. Village of Newport*, 76 Vt. 154, 164 (1904) ("the ultimate test is not municipal ownership, but public use").

Without further explanation, the City also claims the properties are exempt because they satisfy the "public, pious and charitable use exemption" under 32 V.S.A. § 3802(4). The Vermont Supreme Court has established a three-part test to determine if a property qualifies for exemption as a public, pious or charitable use: (1) the property must be dedicated unconditionally to public use; (2) the primary use must directly benefit an indefinite class of persons who are part of the public, and must also confer a benefit on society as a result of the benefit conferred on the persons directly served; and (3) the property must be owned and operated on a not-for-profit basis. *American Museum of Fly Fishing, Inc. v. Town of Manchester*, 151 Vt. 103, 110 (1989) (the "Fly Fishing Test").

Land under Lake Champlain Sailing Center Building

The land under the CSC building appears to satisfy the Fly Fishing Test. The land is being leased to CSC for use as an educational and recreational community waterfront center. CSC is a Vermont non-profit entity whose mission is to "encourage[] and celebrate[] the responsible use and long-term stewardship of Lake Champlain by fostering educational and recreational opportunities for all members of our community. The CSC is committed to eliminating barriers that prevent access to Lake Champlain, offers experiential education for which courage and leadership skills can be developed and provides an inclusive environment for all people to learn sailing and paddling." CSC 2019 IRS Form 990, Sched. O. CSC's use and the terms of the lease demonstrate an unconditional dedication to public use. For example, the lease is expressly subject to the Public Trust Doctrine; base rent is adjusted based upon community service provided by CSC, and it could be considered a default if the level of community service falls below a certain threshold; any sublease must comply with the educational and recreational mission of CSC and the Public Trust Doctrine; and at the end of the lease term, the property, including any improvements permanently affixed, fixtures, docks, and moorings, reverts to the City's ownership.

CSC's use of the property also appears to directly benefit an indefinite class of persons and, in doing so, confers a benefit upon society as a whole. CSC uses the property to provide lake access for all through education and recreational opportunities for people of all ages, abilities and socio-economic status. The scope of beneficiaries and the apparently limited restrictions on participation fall within the definition of an indefinite class. *See Sigler Foundation v. Town of Norwich*, 174 Vt. 129, 134-34 (2002) (finding dairy farm offering education and research opportunities met the indefinite class criterion because it was open to all and never turned anyone away).

Finally, the property leased to CSC is owned and operated on a not-for-profit basis, satisfying the third criterion of the Fly Fishing Test. While this criterion typically involves the same nonprofit entity both owning and operating the property, the

Vermont Supreme Court has recognized that this requirement can be met by a lessor and lessee if they share a "single mission." *Vermont College of Fine Arts v. City of Montpelier*, 2017 VT 12 ¶¶27-29 (citing *Twin Valley Community Services, Inc. v. Town of Randolph*, 170 Vt. 648, 650 (2000) (mem.)). Here, both the City and CSC are non-profit entities that share the mission of making Lake Champlain more accessible to the community and encouraging the responsible use and long-term stewardship of the lake and lakefront.

<u>Waterfront Boathouse leased to Splash Restaurant</u>

In contrast, the Waterfront Boathouse does not satisfy the Fly Fishing Test.

According to the City's property record card, the Boathouse consists of 12,628 sq ft (1st floor – 2,648 sq ft; 2nd floor – 1,740 sq ft; Wood deck – 6,608 sq ft; Open porch – 1,632 sq ft). Based upon the lease agreement between the City and Big Splash Catering, Inc. d/b/a Splash at the Boathouse! ("Splash"), dated 10/1/20, Splash appears to use approximately 76% (9,648 sq ft) of the Boathouse. Therefore, the primary use of the property is for a general commercial purpose, not a public use.

Also, and insurmountable to property tax exemption, is the fact that Splash is a for-profit entity. As such, the property does not have a concurrence of nonprofit ownership and use, and fails the third prong of the Fly Fishing Test.

Furthermore, any excess of income over expenses must be derived incidentally from, and not as a deliberate goal of, the operation of the property, and must be devoted to the public objectives of the project. *See American Museum of Fly Fishing*, 151 Vt. at 110. That is not the case with the property leased to Splash.

<u>SAO Request 2</u>
Whether the Downtown Improvement District (DID) component of the municipal tax rate is required to be included in the calculation of the municipal tax increment commencing with fiscal year 2014?

The City has not demonstrated that the DID tax rate falls within the special assessments excluded from the municipal tax increment pursuant to 24 V.S.A. § 1896(c) and, therefore, it should be included in the calculation.

The City's exclusion of certain municipal tax rates was raised as an issue in the SAO audit of the City's TIF in 2012. Subsequently, the Legislature passed Act 80 (2013) amending 24 V.S.A. § 1896(c) to clarify that ALL municipal taxes are to be included in the TIF increment calculation. Act 80 (2013) §6.

The TIF Rule, adopted on May 6, 2015, also requires the inclusion of "all municipal tax rates, even if the rate was approved for a special purpose and even if that purpose is included in the municipal charter." TIF Rule, §§ 711, 904, n.50 ("Note that the requirement to apply all municipal tax rates against the aggregated value

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went into effect on July 1, 2013. Therefore, any special rates in place prior to July 1, 2013 and any created after July 1, 2013, are subject to this change. The incremental revenues generated by the grand list filed April 1, 2014 and for all subsequent years during the life of the District must be split when these special municipal rates are applied. This requirement applies to any and all special municipal rates, even if they are approved by the municipal charter for a special purpose."). This language clearly indicates an understanding that all tax rates—whether enacted before or after July 1, 2013—are included in the calculation.

Shortly after the TIF rule was adopted, the Legislature enacted Act 57 amending 24 V.S.A. § 1896(c) to exclude special assessments levied under chapters 76A or 87 of Title 24 or under a municipal charter if the proceeds are used exclusively for operating expenses related to the district. Act 57 (2015) §63. The effective date was: "Sec. 63 (special assessments) shall take effect on July 1, 2015, and apply to special assessments enacted after that date." *Id.* § 99.

The plain language of 24 V.S.A. § 1896(c) is clear and unambiguous: <u>all</u> property taxes are to be included in the municipal tax increment, with a limited exception for certain special assessments enacted after July 1, 2015. 24 V.S.A. § 1896(c). Furthermore, the legislative history of 24 V.S.A. § 1896(c) and the TIF Rule demonstrate a clear intent to include all municipal tax rates with a very limited exception provided in Section 1896(c).

The City has acknowledged to the SAO that the DID tax rate was enacted prior to July 1, 2015, but argues that the qualifier added to the effective date in Act 57 means that "not only are special assessments enacted prior to July 1, 2015 to qualify but the provisions shall also apply to special assessments enacted after July 1, 2015." That is not what the legislation says. It expressly applies to special assessments enacted <u>after</u> July 1, 2015. Act 57 (2015) § 99 (10); *See Zlotoff Foundation, Inc. v. Town of South Hero*, 2020 VT 25, ¶s 18-19 (when interpreting a statute, the courts begin by examining the plain language and presume the Legislature intended its ordinary meaning). Furthermore, if the Legislature intended retroactive application of the special assessments, it would have expressly included such language similar to other provisions in Act 57 (2015), such as definitions for taxable income and the minimum tax. *Id.*, at ¶ § 99 (11)

The City further argues that "Had the legislature sought to have the provision only apply to future special assessments it would have used the following language: "Sec. 63 takes effect on July 1, 2015 and applies to **only those** special assessments **which are** enacted after that date." That is essentially what the Legislature said. The words added by the City do not change the meaning of the language used by the Legislature. If the Legislature had wanted to make the provision apply to special assessments enacted before and after July 1, 2015, it would have said so. The City's interpretation makes the last clause of the effective date superfluous.

As TIF Rule footnote 50 recognized, the 2013 amendment to 24 V.S.A. § 1896(c) was intended to apply to all municipal tax rates, whether enacted before July 1, 2013, or

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after July 1, 2013. That applies to the DID rate. The later amendment to Section 1896(c) in 2015 carves out an exception for certain special assessments enacted after July 1, 2015. The DID rate was enacted prior to 2015 so it does not fall within that exception.

Moreover, even if the DID rate did fall within the exception in 1896(c), the City has not demonstrated that the DID proceeds are used exclusively for operating expenses related to the properties in the district, as required by 24 V.S.A. § 1896(c).

Each year from FY2017 to FY2020, the City's financial statement audit firm flagged incomplete capital project accounting as a weakness and repeatedly recommended that the City establish a comprehensive framework for tracking project costs and debt in the general ledger accounting system. See below for the Melanson Heath capital project accounting recommendation from the FY2017 Management Letter.

1. **Improve Capital Project Accounting**

The City's general ledger for capital projects is very summarized, especially when compared to the City's 10-Year Capital Plan. For example, the 10-Year Capital Plan identifies multiple parks' projects, however, all parks' "Special Projects" (the fund's name) are accounted for in one general ledger fund. A similar situation exists where all "Infrastructure Projects" are in only one fund. Additionally, personnel in the Clerk/Treasurer's Office do not have comprehensive engineer-prepared project cost estimates. As a result:

- The status of individual projects is not maintained in the general ledger.
- Individual project budget and actual is not maintained in the general ledger.
- Life-to-date revenue and expenditure reports are not prepared.
- Determining if costs are project eligible is difficult and often results in significant journal entries.
- Determining unspent bond proceeds by project is not maintained in the general ledger.

We recommend that the City re-design how activity related to the City's 10-Year Capital Plan is maintained in the general ledger. In doing so, the City should address the five items noted above and perform an in-depth analysis of the summarized accounting to produce the life-to-date reports for each individual project. Implementation of this recommendation will provide the City with the necessary framework for more complete capital project financial reporting.

Appendix V
Improvement Project Descriptions

The following table lists the City's improvement projects undertaken from FY2011 through FY2021.

Table 12: Improvement Project Timeframe and Descriptions

Project	Description of Improvements
College Street Garage	Concrete spall repair, double tee flange repairs, cleaning and sealing garage decks, and pavement marking.
Waterfront Access North	Brownfield remediation, utility undergrounding, street and sidewalk improvements, new parking areas, storm water treatment, lighting, and pedestrian amenities.
Bike Path	Rebuilding path, installing pause places, installing sub-base, base, paved surfaces, and centerline strip.
Waterfront Park	Upgrades to electrical and water infrastructure and installing new boardwalk.
Champlain Sailing Center	Environmental remediation and shoreline stabilization.
Burlington Harbor Marina	Soil remediation, parking areas, and a public park.
ECHO Sustainability Park	Stormwater retention system improvements, pave parking lot, new crosswalks, and sidewalks.
Moran Frame	Remove building exterior, soil and hazardous building materials remediation, stabilize frame.
Great Streets[a]	Redevelopment of up to 8 segments of the street network surrounding and adjacent to the planned private redevelopment of CityPlace (formerly known as Burlington Town Center).

[a] The redevelopment of the streets is part of the City's Great Streets initiative.

Appendix VI
Details of Errors in Tax Increment Calculation

The City made numerous errors in its tax increment calculation, some of which resulted in too much tax increment (overcalculation) and others that caused too little of tax increment (undercalculation). Errors impacted education and municipal tax increment. Tables 13 and 14 identify the errors by their impact, overcalculation and undercalculation, respectively, and demonstrate the effect on education and municipal tax increment components and the City's General Fund. Some of the significant errors are described in detail after the tables.

Table 13: Calculation Errors that Resulted in Overcalculation of Tax Increment

Description of Tax Increment Errors	Education	Municipal	Combined Overcalculation
Inclusion of the Downtown TIF District tax increment	$314,416	$179,407	$493,823
Incorrect treatment of decrease in property values	$117,863	$42,833	$160,696
Incorrect OTV post-2017 certification	$83,786	$35,568	$119,354
Other miscellaneous adjustments	$14,865	$18,918	$33,783
Total misstated by the City	**$530,930**	**$276,726**	**$807,656**
City correction, recorded in FY2021	($35,214)	($55,058)	($90,272)
Totals	**$495,716**	**$221,668**	**$717,384**

Downtown TIF District Increment

As noted on page 23 of the report, the City included incremental property value from the *Downtown* TIF District in the calculation of incremental property tax for the WFT TIF District. As a result, during a three-year period, the City incorrectly increased the amount of tax increment recorded in the WFT TIF District Fund by $493,823.

Incorrect Treatment of Decrease in Property Values

From creation of the TIF district in 1996 to 2011, the WFT TIF district was allowed to retain 100 percent of education and municipal tax increment. In 2011, Act 45 described the formula to be used to calculate a payment to the Education Fund in lieu of tax increment going forward. The Legislature specified that two hotel properties could be excluded from the determination of this payment.

Commencing in FY2012, the City implemented a two-part calculation of its tax increment.

- Part I: tax increment calculated on all parcel values "frozen" as of the April 1, 2010, grand list.[29] City retains 100 percent.

- Part II: designed to reflect any tax increment growth that occurs after April 1, 2010, and for all parcels other than two hotels, splitting such growth between the City and the State Education Fund.
  a) Two hotel parcels, for which the City continued to keep 100 percent of its education tax increment; and
  b) All other than two hotel parcels, for which the City retains 75 percent of education tax increment, remitting the remaining 25 percent to the State Education Fund.
  c) Municipal tax increment was not affected, and the City retains 100 percent.

The City failed to adjust its methodology when the current year value fell below the April 1, 2010, level. An adjustment was necessary to ensure that the City's calculation of tax increment did not exceed actual total incremental property tax revenues in the WFT TIF district.

The most significant decreases in Part II values occurred after the partial demolition of the Church Street mall. In the four years after the mall demolition, the cumulative property value of all parcels other than two hotels fell *below* the April 1, 2010, level, as follows:

- FY2018: decrement of 5,467,868
- FY2019: decrement of 8,947,168
- FY2020: decrement of 9,349,568
- FY2021: decrement of 9,040,368

Because the cumulative property value for all parcels other than the two hotels decreased to a level below the April 1, 2010, value, a portion of the frozen tax increment no longer existed. The City continued to use its initial methodology, picking up only 75 percent of the decrease. As a result, in numerous years the City recorded more tax increment than the WFT TIF district generated. In total by applying only 75 percent of the decline in values, the City recorded artificial education and municipal tax increment of $117,863 and $42,833, respectively. Due to this error, the WFT TIF Fund owes $160,696 to the City General Fund.

[29] Property values frozen on April 1 are use in the next fiscal year property tax billing cycle and respectively, next fiscal year tax increment calculations. Thus April 1, 2010, values were reflected in FY2011 tax increment calculations.

Understated OTV

Based on land title records, the 75 Cherry Street land parcel has been continuously owned by private entities since prior to the creation of the WFT TIF district and should have been treated as taxable at the time the TIF district was established. Thus, the value of the land parcel should have been included in the WFT TIF OTV in 1996. We brought this issue to the attention of the City during our first audit.

Omission of this parcel from the WFT TIF OTV should have been corrected by the City at least, in 2017 when the City was required to file its WFT TIF OTV recertification with VEPC.

We recommend correcting the WFT TIF OTV for the 1996 value of this land parcel, $847,602, effective for the calculation of the education and municipal tax increment starting in FY2017 and forward. Failure to increase OTV means that incremental property value growth was higher than it should have been resulting in too much tax increment.

The City also made several errors that resulted in undercalculation of WFT TIF tax increment. These errors are listed in Table 14.

Table 14: Calculation Errors that Resulted in Undercalculation of Tax Increment

Description of Tax Increment Errors	Education Tax Increment	Municipal Tax Increment	Combined Undercalculation
Exclusion of Downtown Improvement District (DID) tax rate	--	$378,721	$378,721
Omitted 120 percent commercial adjustment	--	$286,484	$286,484
Other Miscellaneous Adjustments	$69,847	$20,049	$89,896
Totals	**$69,847**	**$685,254**	**$755,101**

Exclusion of the DID tax rate and omission of 120 percent commercial adjustment

With the introduction of Act 80 (2013), the City was unequivocally required to include all municipal tax rates in the calculation of its municipal tax increment.

As noted on page 23 of the report, in multiple years, the City excluded its Downtown Improvement District (DID) tax rate from the calculation of its municipal tax increment, for a total undercalculation of $378,721. City officials explained that such exclusion was due to the agreement between the City and VEPC. However, the correspondence presented by the City in support of such agreement did not demonstrate VEPC concurrence. Moreover, the City has been highly inconsistent in providing information on its special tax rates in their annual reports filed with VEPC. In some years, it may have been possible for VEPC to identify the exclusion of the DID. However, the three most recent annual reports omitted any mention of the DID tax rate, so VEPC did not have the information to know whether it was included or not. The AGO concluded that the City did not have grounds for excluding this tax rate from its calculation of municipal tax increment. See Appendix III for AGO opinion.

Similarly, the City applies a factor of 120 percent to the assessed value of commercial properties known as the "commercial adjustment," but excluded this factor from the calculation of municipal tax increment until FY2017. The City should have commenced including the 120 percent factor in FY2014 after the passage of Act 80 (2013). Because it was excluded for three years, the City undercalculated tax increment by $286,485.

The City provides the breakdown of the current municipal tax rate on the back of its tax bills.

Figure 2: Example of the City's Tax Bill Backer

General Information: To avoid penalties, your payment must be received in full in the City Clerk Treasurer's Office by the due date or be postmarked on or before the due date. Post dated checks will not be accepted. Please forward this bill to the new owner if sold. Communication with a third party payer is the responsibility of the property owner. If you need a disability accommodation to read this bill, please call 865-7000 or 865-7142 TTY.

FY 2016 Municipal Tax Rate Breakdown (Total = .7926 cents)

Tax Rate Item	Tax Rate	Tax Rate Item	Tax Rate	Tax Rate Item	Tax Rate
General City	.26040	Housing Trust	.00540	CCTA	.04290
Streets	.06170	Parks-Gen	.02500	County Tax	.00520
Police/Fire	.08070	Penny for Parks	.01000	Retirement	.17970
Open Space	.00540	Highway	.03120	Debt Service	.08000
		Library Tax	.00500	Local Exemption	.00380

- **.09 Downtown Improvement District levy on non-residential properties located therein.**

Penalties, Interest and Warrant fees issued for Late Payments: On June 23, 2016 unpaid taxes will become delinquent and a warrant will be issued. Ten days thereafter the warrant will be delivered to the Constable for collection of delinquent amounts, interest and fees associated with the unpaid delinquent taxes, as well as the other charges allowed by law. The Constable is authorized to conduct tax sales to collect delinquent taxes. You may avoid this action by paying all unpaid taxes, including penalties and interest accrued, to the City Clerk/Treasurer's Office, City Hall, 149 Church St., Burlington, VT before the date of delinquency.

Due Date Table:

Fees	1st Installment	2nd Installment	3rd Installment	4th Installment	Delinquent Fees Added June 23
Due Date	August 12, 2015	November 12, 2015	March 12, 2016	June 12, 2016	
Interest	1% added on August 13	1% added on November 13	1% added on March 13	1% added on June 13	
Interest	4% additional added August 20	4% additional added Nov.20	4% additional added March 20	4% additional added June 20	
Interest	1% added Sept 13 & each month thereafter	1% added Dec 13 & each month thereafter	1% added April 13 & each month thereafter	1% added July 13 & each month thereafter	
Penalty					8% one time Delinquent Penalty
Warrant Fee					$1.00 fee on each Delinquent account

State Payments: Property tax adjustment credits from the State are shown on the face of your bill. These credits have been pro-rated between the four installments. For questions about homestead declarations or property tax adjustments, please call the State of Vermont automated taxpayer information line toll free at 1 (866) 828-2865.

Automated Tax Payments: The City provides for automatic bank withdrawals for tax payments from your bank account. For a sign-up form, please contact the Clerk/Treasurer's Office at 865-7000. The deadline to sign up is Friday, July 31st.
If you have already enrolled in Automatic Tax Payment no further action is necessary.

Appendix VIII
Comments from City Management

The following is a reprint of management's response to a draft of this report. Our evaluation of these comments is contained in Appendix IX.

OFFICE OF THE CLERK/TREASURER

City of Burlington
City Hall, Room 20, 149 Church Street, Burlington, VT 05401
Voice (802) 865-7000
Fax (802) 865-7014
TTY (802) 865-7142

January 12, 2023 – **Updated Version**

Mr. Douglas Hoffer
State Auditor
State of Vermont

Dear Mr. Hoffer,

Summary
The City of Burlington thanks the Vermont State Auditor for its thorough audit of the Waterfront TIF District and productive collaboration throughout this process. The audit, which ran from October 2021 until December 2022, found significant accounting errors. The City regrets these errors and has agreed to take a number of prompt steps to fix them retroactively. Moreover, to avoid future errors, the City is committed to completing the implementation of improved project accounting measures that the audit calls for, and in fact has been working towards this outcome for years (as the audit notes). At the same time, we object to several of the audit's findings, recommendations and characterizations and herein detail those concerns.

Immediate steps the City will take to fix issues documented in the audit
The City intends to promptly take the following steps in response to the finalized audit findings:

See Comment 1 on page 59

- The City will transfer $1,181,034 from its General Fund to Burlington's Waterfront TIF District fund.
- The City will then reimburse the General Fund with $681,040.49 from unexpended Waterfront Access North (WAN) sources that have not yet fully been drawn down (in part because expenses were previously improperly applied to the Waterfront TIF District instead of WAN).
- The City will either:
  - Submit replacement eligible TIF invoices for $173,056 and provide copies; or
  - Repay pay VMBB $173,056 from the General Fund to reduce the overall debt; or
  - Pay principal and interest on $173,056 of the VMBB debt from the General Fund going forward.
- Separate and apart from these transactions, is the $197,510 potential liability set forth below regarding the discrepancies in ed fund calculations which the City will resolve with the Tax Department and NEMRC.
- The net effect of these adjustments at this time is an expected reduction of the City's Unassigned Fund Balance (UAFB) between $500,000 and $673,000.

Impacts of adjustments in response to the audit
The City is well-positioned to address an unplanned expense of this magnitude because of the financial planning it has completed over the last decade. In 2015 the City of Burlington adopted a policy of maintaining an Unassigned Fund Balance (UAFB) that amounts to 5-15% of its annual operational costs in order to be able to pay for unanticipated expenses. After making these adjustments the City's UAFB ratio will continue to exceed 10%. These adjustments will have no impact on the City's operations, nor will they trigger a need to increase tax rates.

See Comment 2 on page 59

The City disputes the State Auditor's finding that Burlington owes the State Education Fund $197,510
Though the report characterizes certain increment calculations as City "errors," many of these calculation differences arose due to programming problems within the State's property tax data system, administered

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by the private contractor New England Municipal Resource Center (NEMRC) and it remains unclear what the actual discrepancies are. The City has worked with the State Tax Department and NEMRC over several years to resolve these problems and this process remains underway. The City is committed to paying the State Education Fund for any totals owed when this process is complete and agreed upon by the three parties involved.

Relatedly, the State Tax Department is in the process of modernizing the current property tax data system for the first time in many years and we are confident that when complete such discrepancies will be much less likely to occur.

The City is committed to completing its efforts to improve its project accounting systems that have been underway since 2018

The City has made enormous progress fixing its financial systems since 2012 when an annual audit found 12 material weaknesses with its financial systems and the City was downgraded to the edge of junk bond status. The audit that year noted particular problems within the City's capital project accounting with three of the material weaknesses involving such projects and the audit documenting nearly $24 million in deficits that projects owed the General Fund.

Since that time, after much hard work, the City has eliminated all of the material weaknesses and regained its AA credit rating. That progress included eliminating all of the material weaknesses and long-term deficits related to capital projects.

Nonetheless, the City recognized in 2018 that its project accounting systems needed significant additional improvement when its own auditors recommended implementing new project accounting measures. Although implementation has been somewhat slowed by the pandemic, the City has taken numerous steps since then to improve this area of our fiscal management in recent years. We appreciate that the State Auditor's report acknowledges these efforts and we further detail them here.

Specifically, in January 2019 the City engaged the accounting and management consulting firm BerryDunn to review project accounting practices, procedures, and technology in order to move forward on the recommendation from the City's auditor. In June, BerryDunn issued a report to the City detailing the status of the City's accounting for its projects and proposing a path forward. As a result, the City took several actions including:

- In August 2019, the City created a Public Works project accountant position;
- In February 2020, the City hired the management consultant firm CliftonLarsonAllen (CLA) to develop and implement overall capital accounting policies and procedures for the City and to reconcile past accounts;
- In April 2021, the City hired a Senior Accountant to specialize in project accounting;
- Also, in April 2021, the City hired MuniCap, a public finance consulting firm nationally recognized as TIF experts, to help the City manage the finances and administration of the Waterfront and Downtown TIF Districts - Among other tasks, MuniCap ensure the City approves and signs requisitions appropriately and that the Capital Accountant correctly records and maintains all TIF documentation as required;
- As of July 2021, the City had fully implemented project accounting for the City's capital funds allowing CLA to focus on instituting project accounting for the City's TIF projects; and
- In August 2022, the City established a Trustee to hold TIF funds and pay invoices on the City's behalf. This Trustee provides another level of oversight to ensure that TIF administration is handled correctly.

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See Comment 3 on page 60

The largest accounting errors documented in the audit took place in 2014 and 2015
It is important for the public to understand that this audit involved a review of accounting actions from as long ago as 2011. While the City acknowledges that to this day continued improvement is still needed in its project accounting systems, all of the largest six-figure errors documented in the audit were Bike Path and Waterfront Access North accounting errors that were made eight-nine years ago as the City was still relatively early in the process of overhauling its financial systems.

Other responses of note
The City acknowledges its continuing obligation to take all necessary steps to achieve error-free project accounting, and the foregoing demonstrates our commitment to such efforts. We accept many of the findings in the auditor's report and agree to take steps to implement most of the recommendations. However, the City wishes to make transparent that we recognize our right to further explore and utilize available avenues to TIF municipalities to contest the findings and recommendations with which we disagree. Such issues include, but are not limited to:

See Comment 4 on page 60

- The City understands that the State Auditor has received a legal opinion from the State Attorney General's Office opining that the City's Downtown Improvement District (DID) tax is not a special assessment that qualifies for exemption from the calculation of tax increment. Further, the report recommends payment into the Waterfront District TIF fund of such amounts not included in the past and inclusion of same going forward. The City will further explore the soundness of this legal opinion with the State and reserves all rights on this issue, while clearly articulating that the City plans to explore this issue in a swift manner designed to achieve finality on this issue with the State. For example, it is entirely possible that the City could agree to the finding to include the past amounts attributable to the DID in the Waterfront TIF Fund while reserving its right to challenge the inclusion going forward.

See Comment 5 on page 61

- The City worked with the State Tax Department's Division of Property Valuation and Review (PVR) and with the Vermont Economic Progress Council (VEPC) to address the tax status issue pertaining to a since-demolished parking garage formerly located at 75 Cherry Street. The report recommends that an adjustment of the Original Taxable Valuable (OTV) for the district should have occurred as a logical consequence of addressing the tax status issue raised in the 2010 State Auditor's report for the district, and that the City owes certain monies for not having made the adjustment and must make that adjustment now. The City reserves its rights to engage both PVR and VEPC in addressing this issue, so as to resolve it in a mutually agreed upon manner.

See Comment 6 on page 61

- The City reserves its rights to engage the State in determining whether the "Boathouse" is, in fact, a taxable parcel. The City continues to question whether a property located on Lake Champlain can and should be subject to property tax. The City looks forward to addressing this issue and resolving it in a mutually agreed upon manner.

See Comment 7 on page 62

- The City maintains that all of its public votes for its Waterfront TIF District satisfied all necessary legal requirements. That said; the City wishes to participate in any public process aimed at improving TIF laws and administrative rules, with an eye towards improving the overall functionality and effective administration of TIF in the State of Vermont.

See Comment 8 on page 62

- The City maintains that the basic principles of legal interpretation of legislative language dictate a finding that Act 134 (2016), which authorized the extension of the City's Waterfront TIF District subject to certain conditions, is clear on its face and that any surplus retained (i.e. accumulated) through FY2025 can be utilized for debt service and related costs during the remaining life of the district (including the extension period if the conditions are met). No legislative clarification is required.

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See Comment 9 on page 63

- Similarly, the City maintains that the basic principles of interpreting legislative language dictates a finding that Act 134 (2016), which authorized the extension of the Waterfront TIF District subject to certain conditions, is clear on its face as to what base value is to be used to calculate incremental value for the properties included in the extension during the FY2026 to FY2035 period. Additionally, the percent of education tax increment retained, the percent of education tax increment required to be paid to the Education Fund, and the percent of municipal tax increment to be allocated to the Waterfront TIF District Fund during those years are clear as well. Simply put, in the absence of specific language to the contrary, all provisions in place prior to the extension authorized under this amending provision of law remain in place. There is, therefore, no need for legislative clarification of these relevant referenced provisions of Act 134 (2016).

Once again, the City of Burlington thanks the Vermont State Auditor for its thorough audit of the Waterfront TIF District and productive collaboration throughout this process. Please don't hesitate to contact me or Mayor Miro Weinberger if we can be of further assistance.

Best,

Katherine Schad
Chief Administrative Officer
kschad@burlingtonvt.gov

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Appendix IX
SAO Evaluation of City Management's Comments

In accordance with generally accepted government auditing standards, the following tables contain our evaluation of management's comments.

Comment #	Management's Response	SAO Evaluation
1	*The City will transfer $1,181,034 from its General Fund to Burlington's Waterfront TIF District fund.*	The amount the City plans to transfer is the sum of our recommendations #3, 6, 10, 11, and 12. While agreeing to transfer funds from the General Fund to the Waterfront TIF District Fund, the City also indicated that it plans to seek resolution of the amount owed to the Education Fund with PVR and NEMRC. See our comment 2. The City indicated it will contest other findings and recommendations with which it disagrees and provided a list of examples. See our comments 4 - 9.

2	*Though the report characterizes certain increment calculations as City "errors," many of these calculation differences arose due to programming problems within the State's property tax data system, administered by the private contractor New England Municipal Resource Center (NEMRC) and it remains unclear what the actual discrepancies are. The City has worked with the State Tax Department and NEMRC over several years to resolve these problems and this process remains underway. The City is committed to paying the State Education Fund for any totals owed when this process is complete and agreed upon by the three parties involved.*	Of the $197,510 owed to the Education Fund, $119,154 is related to errors in transmission of data via the NEMRC system to PVR. The State Auditor's Office and PVR agree on the discrepancies in the transmission of data through June 30, 2021, the end of the period covered by our audit. In addition, PVR identified errors in the City's FY2022 and FY2023 data submissions. According to PVR, the City underpaid the Education Fund in FY2022 but the FY2023 data is still preliminary. PVR, the City, and NEMRC continue to work together to determine the correct amounts due to the Education Fund for these two years. The remainder is largely due to the City's failure to adjust OTV during the 2017 certification for a property that should have been recognized as a taxable parcel from the creation of the TIF district. This is unrelated to any programming issues with the NEMRC system. For clarity, we present the components of the amount owed in the following chart:

Description of issue	Impact on amount owed to Education Fund
Errors in transmission of data to PVR	$119,154
Failure to adjust OTV for 75 Cherry Street	$83,786
Overpayment (FY2012 – FY2014)	($5,430)
Total owed to Education Fund	$197,510

Comment #	Management's Response	SAO Evaluation
3	*It is important for the public to understand that this audit involved a review of accounting actions from as long ago as 2011. While the City acknowledges that to this day continued improvement is still needed in its project accounting systems, all of the largest six-figure errors documented in the audit were Bike Path and Waterfront Access North accounting errors that were made eight-nine years ago as the City was still relatively early in the process of overhauling its financial systems.*	We found that the City used $1,114,198 more of tax increment than was authorized to pay for the Bike Path and Waterfront Access North improvements. The transactions associated with this error originated in FY2014 and FY2015, but we found errors throughout the scope of the audit which covered FY2011 to FY2021. An audit does not give more or less weight to an error based on when in the audit period the error occurred. The City acknowledged the error and committed to repaying the WFT TIF Fund with General Fund monies.

Comment #	Management's Response	SAO Evaluation
4	*The City understands that the State Auditor has received a legal opinion from the State Attorney General's Office opining that the City's Downtown Improvement District (DID) tax is not a special assessment that qualifies for exemption from the calculation of tax increment. The City will further explore the soundness of this legal opinion with the State and reserves all rights on this issue, while clearly articulating that the City plans to explore this issue in a swift manner designed to achieve finality on this issue with the State. For example, it is entirely possible that the City could agree to the finding to include the past amounts attributable to the DID in the Waterfront TIF Fund while reserving its right to challenge the inclusion going forward.*	As the City noted, the Attorney General's Office (AGO) concluded that the City's DID tax is not a special assessment that qualifies for exemption from the calculation of tax increment. Specifically, the AGO determined *"The plain language of 24 V.S.A. § 1896(c) is clear and unambiguous: all property taxes are to be included in the municipal tax increment, with a limited exception for certain special assessments enacted after July 1, 2015. 24 V.S.A. § 1896(c). Furthermore, the legislative history of 24 V.S.A. § 1896(c) and the TIF Rule demonstrate a clear intent to include all municipal tax rates with a very limited exception provided in Section 1896(c) … The later amendment to Section 1896(c) in 2015 carves out an exception for certain special assessments enacted after July 1, 2015. The DID rate was enacted prior to 2015 so it does not fall within that exception."*

Comment #	Management's Response	SAO Evaluation
5	*The City worked with the State Tax Department's Division of Property Valuation and Review (PVR) and with the Vermont Economic Progress Council (VEPC) to address the tax status issue pertaining to a since-demolished parking garage formerly located at 75 Cherry Street. The report recommends that an adjustment of the Original Taxable Valuable (OTV) for the district should have occurred as a logical consequence of addressing the tax status issue raised in the 2010 State Auditor's report for the district, and that the City owes certain monies for not having made the adjustment and must make that adjustment now. The City reserves its rights to engage both PVR and VEPC in addressing this issue, so as to resolve it in a mutually agreed upon manner.*	This is not an ambiguous issue, and therefore, we do not believe there is an outstanding issue to be resolved by the parties. The property was taxable in 1996 at the creation of the TIF district and should have been in the OTV established at that time. Because the City misclassified the property as tax-exempt, it was excluded from OTV. The TIF Rule, adopted May 6, 2015, provided a process for districts created before 2006 to have OTV certified by the municipality, VEPC and PVR. The WFT TIF OTV should have been increased by $847,602 (1996 value of the land parcel) during the certification process. As this adjustment was not made, the Education Fund is owed $83,786, a portion of the total $197,510 we concluded is owed to the Education Fund.
6	*The City reserves its rights to engage the State in determining whether the "Boathouse" is, in fact, a taxable parcel. The City continues to question whether a property located on Lake Champlain can and should be subject to property tax. The City looks forward to addressing this issue and resolving it in a mutually agreed upon manner.*	The AGO advised that the Boathouse is a taxable property because the test for exemption from property taxation is not municipal ownership but public use, and the primary use of the Boathouse is for general commercial purposes, and it is leased by a for-profit entity. Subsequently, the City contended that the for-profit entity is *"entirely located as a business on the lake and, if anything, should be taxed for Business Personal Property based on that value."* The AGO considered the City's rationale and indicated it did not alter the previous opinion. Specifically, the AGO noted that the grand list identifies the Boathouse as land and buildings, not personal property, and pointed out that the *"property does not appear to fall within the definition of 'business personal property' set forth in 32 V.S.A. §3618(C)(1), which by its terms applies to 'tangible personal property' and explicitly excludes 'goods and chattels so affixed to real property as to have become part thereof, and that are therefore not severable or removable without material injury to the real property.'"* The City is entitled to pursue a different result, but at present the relevant authority has rendered its judgment on this matter.

Comment #	Management's Response	SAO Evaluation
7	*The City maintains that all of its public votes for its Waterfront TIF District satisfied all necessary legal requirements.*	Based on the evidence provided by the City, we concluded that the City did not provide an estimate or range of interest for the bonds or HUD Sec. 108 loan in the public information notice for the 2014 vote as required. In the instance of the 2016 vote, VEPC determined that the City had violated TIF Rule 718 in connection with the 2016 vote and the Secretary of ACCD concluded no action was necessary. The Superior Court concluded that "even assuming Taxpayers could establish all four of its alleged irregularities related to placing the question on the ballot, those procedural and technical errors taken together would not be sufficient to invalidate the election." If these outcomes are not the intent of the Legislature, we recommended the Legislature amend statute to specify whether noncompliance with public information and public vote procedural requirements could invalidate a vote or require a municipality to take steps to correct deficiencies.
8	*The City maintains that the basic principles of legal interpretation of legislative language dictate a finding that Act 134 (2016), which authorized the extension of the City's Waterfront TIF District subject to certain conditions, is clear on its face and that any surplus retained (i.e., accumulated) through FY2025 can be utilized for debt service and related costs during the remaining life of the district (including the extension period if the conditions are met)…. No legislative clarification is required.*	Act 134 (2016) extended the borrowing period and retention of tax increment for three specific properties but did not authorize the extension of the Waterfront TIF district. In addition, Act 134 (2016) did not address the Act 45 (2011) stipulation that surplus tax increment of the district be distributed to the City of Burlington and the State Education Fund upon termination at the end of FY2025. We anticipate differing legal interpretations for this issue. Thus, we recommended that the Legislature clarify whether excess education tax increment must be distributed to the Education Fund at the end of FY2025.

Appendix IX
SAO Evaluation of City Management's Comments

Comment #	Management's Response	SAO Evaluation
9	*Similarly, the City maintains that the basic principles of interpreting legislative language dictates a finding that Act 134 (2016), which authorized the extension of the Waterfront TIF District subject to certain conditions, is clear on its face as to what base value is to be used to calculate incremental value for the properties included in the extension during the FY2026 to FY2035 period. Additionally, the percent of education tax increment retained, the percent of education tax increment required to be paid to the Education Fund, and the percent of municipal tax increment to be allocated to the Waterfront TIF District Fund during those years are clear as well. Simply put, in the absence of specific language to the contrary, all provisions in place prior to the extension authorized under this amending provision of law remain in place. There is, therefore, no need for legislative clarification of these relevant referenced provisions of Act 134 (2016).*	Since Act 134 (2016) is silent regarding the details of the tax increment calculation including the percent of education tax increment that may be retained and whether any portion is required to be paid to the Education Fund, we believe it is preferable to specify these details rather than leave it to legal interpretation. Thus, we recommended that the Legislature clarify the various factors relevant to the tax increment calculation for these three properties.

Appendix X
Comments from the Vermont Economic Progress Council

The following is a reprint of the Vermont Economic Progress Council response to a draft of this report.

VERMONT

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January 12, 2023

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

Dear Mr. Hoffer,

The Vermont Economic Progress Council (VEPC) thanks you and your office for the opportunity to provide comment on the Burlington Waterfront TIF District Audit.

As the audit has alluded to, VEPC did not have the authority to provide oversight of the Burlington Waterfront TIF District for much of the time period that this audit covered. Once the legislature made provisions for VEPC to conduct oversight of the Waterfront TIF District, VEPC staff have made substantial strides in implementing processes and procedures to check whether the TIF District is in compliance with statute and TIF Rule. As such, we appreciate the work of the State Auditor's Office through the course of this audit to identify areas of potential noncompliance and make recommendations for improving oversight. Additionally, we welcome and support the improvements in recordkeeping of the Waterfront TIF District that the City of Burlington has implemented.

Specific to the recommendations for VEPC, we concur that the City must provide records of all improvement costs paid for with TIF debt for each project. VEPC staff monitors costs reported by Burlington in the TIF Annual Reporting form and checks for eligibility. However, for an accurate picture of compliance for all years, we recognize that prior year costs must also be provided by the City. Once received, we will share that information with the State Auditor's Office. Regarding the identification of ineligible costs paid for with TIF debt, VEPC staff supports the recommendation to implement additional procedures for monitoring repayment of debt service of those costs. With the Annual Reporting period by TIF Districts for fiscal year 2022 coming to a close as of this date, any new or enhanced procedures will be implemented beginning with fiscal year 2023 reporting. We trust your office will revisit this item in a future audit.

We appreciate your staff's professionalism throughout the audit process and their diligence in auditing the Burlington Waterfront TIF District.

Sincerely,

John Davis
Chair, VT Economic Progress Council

Abbie Sherman
Executive Director