

Founded in 1852
by Sidney Davy Miller



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June 9, 2022

Warren City Council
One City Square
Warren, MI 48093

RE: Proposal on Forensic Audit of Warren DDA

Members of Warren City Council:

On behalf of my client, the Warren Downtown Development Authority, I write this to provide you with records of the DDA's finances for Fiscal Year 2021-2022 and to urge you to dismiss the idea of auditing these records. There is no mystery about the funds which the DDA has received and spent in the current fiscal year, and the request for an audit is nothing more than a mean-spirited attempt to create a political spectacle.

The History Behind Current Events

Four members of the Warren City Council see the Mayor as a rival, and they would like to assassinate his character in order to damage him as a political figure. Instead of focusing on bigger matters of public concern, these members have repeatedly upbraided the Mayor with subjective criticisms, disapproving him because he allowed the grass along a service drive to get too tall or because the tone of his voice is supposedly too harsh... Through many overt and covert attempts to harm the Mayor politically, these members have revealed the true motivation behind their actions relative to the DDA is their hostility toward the Mayor as political competition.

The same hostility also lay behind their criticism of the Mayor's refusal to follow the unilaterally amended budget which Council purported to adopt last spring. Someone on Council reported the matter to the Attorney General, but she declined to take any action. Michigan's Uniform Budget and Accounting Act provides, "[i]f any audit or investigation conducted under this act discloses statutory violations on the part of any officer... of any local unit, a copy of such report shall be filed with the attorney general who shall review the report and... [do] as [s]he deems necessary." MCL 141.131. It is clear that the four members of Council are proposing an audit of the DDA in the hope that it might "disclose[] statutory violations" and change the Attorney General's mind, although this is a silly idea for at least two reasons.

No Need for an Audit

First, the question of whether the Mayor was right to dismiss the Council's actions in unilaterally amending the budget and "adopting" it over his objection is a legal question and not a matter of

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accounting or financial management. Because this is true, the Mayor instituted a lawsuit in February to have the courts determine whether the Council has the authority to unilaterally amend the Mayor's proposed budget over the Mayor's objection. The matter is currently before the Court of Appeals. Second, as the enclosed records reveal there is no evidence of a "statutory violation" to be found in the DDA's finances.

But, the truth is that the four members of Council are not content to wait for the courts' final determination on the essential question of budgetary power in Warren, and they probably do not care what the DDA's records reveal. Perhaps they doubt their chances to succeed in court, or perhaps they believe a victory on the essential question would not do enough to harm the Mayor politically... Whatever the case, their request for an audit of the DDA is a misguided attempt to make a spectacle, because no one believes any money is unaccounted for. All money flowing into and out of the DDA during FY 2021-2022 is reflected in the enclosed financial summary and records, prepared by Rick Fox, and there is no legitimate reason for an audit.

No Authority for Forensic Audit

Warren's DDA was established under the Recodified Tax Increment Financing Act. MCL 125.4201 *et seq.* That statute provides in part:

An authority shall be a public body corporate which may sue and be sued in any court of this state. An authority possesses all the powers necessary to carry out the purpose of its incorporation. The enumeration of a power in this part shall not be construed as a limitation upon the general powers of an authority. [MCL 125.4202(2)].

Although Council has the power to approve the DDA's annual budget, nothing in the Michigan Compiled Laws or Warren City Charter gives Council the power to compel the DDA to submit itself to an audit before the end of a fiscal year – certainly not when the only thing the audit is meant to do is to provide a political "witch hunt."

For all these reasons, I ask that you receive and review the attached records of the DDA's finances in the current fiscal year and dismiss any proposal to audit the DDA's current fiscal year before it even ends.

Sincerely,

Miller, Canfield, Paddock and Stone, P.L.C.

By: 

Lawrence T. Garcia

LTG/AAF