



A. JOSEPH DE NUCCI  
AUDITOR

## AUDITOR OF THE COMMONWEALTH

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April 7, 2009

Michael Reardon, Chairman  
Board of Selectmen  
Town of Belchertown  
Finnerty House  
One South Main Street  
Belchertown, MA 01007

Dear Chairman Reardon:

At the request of the Belchertown Board of Selectmen and as authorized by Chapter 11, Section 12, of the Massachusetts General Laws, we performed a special-scope audit of certain operations of the Belchertown Economic Development Industrial Corporation (BEDIC), which was established in accordance with Chapter 121C of the General Laws. Our audit was initiated for the purpose of conducting a review and analysis of BEDIC's financial transactions and business practices; determining whether BEDIC is operating efficiently and effectively; and determining whether BEDIC is complying with its enabling legislation and other applicable laws, rules, and regulations. In addition, our intent was to evaluate and report on applicable internal controls and recommend any areas of BEDIC operations that could be strengthened and made more efficient or effective.

Our audit was not conducted for the purpose of expressing an opinion on BEDIC's financial statements. Our audit was made in accordance with generally accepted government auditing standards for performance audits. We identified and evaluated the policies, procedures, practices, and internal controls employed by BEDIC over its financial transactions and business practices relating to its mission of procuring, redeveloping, maintaining, and reselling 263 acres of the former Belchertown State School (BSS) property.

Our review consisted of, but was not limited to, the following:

- Reviewing applicable laws, regulations, and policies relating to BEDIC's creation and overall operation.
- Examining the oversight roles and responsibilities of BEDIC and Belchertown officials pertaining to the acquisition and development activities of the former BSS property.
- Meeting with various current and former BEDIC, Town of Belchertown, and state officials.
- Meeting with various concerned citizens.
- Examining BEDIC procedures, including related internal controls, pertaining to property acquisition, development, and maintenance practices during the period July 1, 2000 through June 30, 2008.
- Reviewing various BEDIC property sale transactions and comparing them to other property transactions.
- Examining BEDIC financial reports, accounting records, minutes of meetings, correspondence files, real estate appraisal reports, and other pertinent documents.

During our review, we met with current and former BEDIC and town officials and representatives and interviewed various other state officials, as deemed necessary, for the purposes of:

- Gaining an understanding of key areas of concern identified by various parties.
- Determining potential changes that could be implemented to encourage the future success of BEDIC redevelopment efforts.
- Reviewing the procedures and processes employed by BEDIC related to its real estate activities.
- Ascertaining what policies, procedures, and contracts were in effect for BEDIC with respect to real estate procurement, development, and maintenance.
- Ascertaining what changes in policies and procedures BEDIC is considering for future development efforts.

To meet our objectives, we reviewed certain events and transactions as well as related policies, procedures, and internal controls of real estate related activities that transpired during the period July 1, 2000 through June 30, 2008.

As discussed in greater detail in the Attachment to this letter, BEDIC has made progress in a number of areas over the past few years. Specifically, a number of parcels have been developed and are generating tax revenue for the Town of Belchertown; operational budgets have been adopted and monitored by

comparing actual income and expenses on an Excel spreadsheet; and a number of operational policies have been adopted and implemented.

Future development success in the current economic climate will require innovative approaches and hard work. Since BEDIC may be the recipient of at least \$10 million of funds from the Commonwealth to secure the property and clean up hazardous waste, BEDIC needs to ensure that it has sufficient policies and procedures in place, as well as the administrative capability to protect a significant investment of taxpayer dollars. In order to help strengthen its procedures and ensure that future development opportunities proceed in the best interests of the Town of Belchertown and the Commonwealth, BEDIC should:

- Examine the results of the current UMass Amherst development plan after it is completed, assess any new development areas noted, and prioritize the order of investigation of those potential development ideas.
- Contact other public, quasi-public, and private property development entities to explore current development trends as well as best current uses for the available property. BEDIC should also consider whether these other resources could aid in reviewing potential developers' financial viability to help ensure that the developers are likely to deliver the projects that are proposed.
- Explore the option of bond financing to raise funds for property contamination remediation in conjunction with proposed state clean-up funding.
- Consider adding any developer infrastructure requirements (that may be part of the purchase requirements) as a recorded deed covenant and monitor compliance with those special requirements.
- Formalize consultant contracts to delineate the work being performed by the consultants as well as documenting the consultants' final work product to support payment.
- Review procedures for securing unoccupied buildings to protect public safety.
- Conduct a review of potential ethics violations and adopt a conflict-of-interest policy in consultation with the State Ethics Commission and the Office of the Attorney General.
- Institute a requirement that property purchase deposit checks be certified or cashier's checks to help ensure collectability.
- Implement a more complete accounting system in accordance with Generally Accepted Accounting Principles.
- Adopt a procedure to ensure that the Town Clerk is provided with all minutes of BEDIC board meetings.
- Have an audit, conducted in accordance with Generally Accepted Auditing Standards by an independent certified public accountant rather than a financial statement compilation.

I hope this information will be helpful in your continued efforts to secure the future development and financial stability of BEDIC and the greater Belchertown area. Should you have any questions or need further assistance concerning this or any other matters, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, reading "A. Joseph DeNucci". The signature is written in a cursive, flowing style with a large initial "A" and "D".

A. JOSEPH DeNUCCI

Auditor of the Commonwealth

## INTRODUCTION

### *Background*

Belchertown State School (BSS), which first opened in 1917, was a state institution for developmentally handicapped individuals consisting of 13 dormitories housing 50 to 150 people per dormitory on an 800-acre site. As a result of a desire for community placements that started in the 1970s and subsequent court orders, BSS was eventually closed in 1992. At that time, the state proposed to rework BSS into a minimum-security prison; however, that plan was rejected at a Belchertown town meeting in 1992.

A town meeting vote established the Belchertown Economic Development Industrial Corporation (BEDIC) in accordance with 121C of the General Laws, and the Select Board appointed its first board members on December 9, 1992. BEDIC was created to receive ownership of the former BSS property from the Commonwealth of Massachusetts Division of Capital Asset Management (DCAM) and redevelop the property for purposes of economic development and benefit for the Town of Belchertown. At about this time, a town meeting created an Economic Development Industrial Corporation and an Industrial Development Finance Authority specifically to develop, implement, and finance an Economic Development Plan, with an emphasis on the former BSS property. At a town meeting in 1993, the Town of Belchertown approved, by a two-thirds majority, an economic development plan that outlined the broad parameters of the activity mix planned for the campus. The property, consisting of what is known as Parcels B, D, and E, was finally conveyed to BEDIC on April 12, 2002. Parcel B was the main campus of BSS, which contained numerous old buildings and tunnels containing such contaminants as asbestos and lead paint. Parcels D and E, on the other hand, were undeveloped raw land. Other parcels were either conveyed or leased at various times to other parties, as shown in the following chart.

<u>Parcel</u>	<u>Owner/Lessee</u>	<u>Year</u>	<u>Approximate Acreage</u>
A	Town of Belchertown	1996	20
B	BEDIC	2002	166
C	Town of Belchertown	1996	8
D	BEDIC	2002	53
E	BEDIC	2002	44
F	Commonwealth of Mass	2002	7
North Parcels	Town of Belchertown	1993	28
Sewer Plant	Town of Belchertown	1994	15
North Center	State Leases to NESFI*	1986	437

Small South	Belchertown Housing Authority	1993	4
Cemetery and Superintendent's House	Dept. of Mental Retardation	1996	<u>18</u>
Total Acreage			<u>800</u>

\*The New England Small Farm Institute, Inc., a not-for-profit organization.

Prior to April 2001, BEDIC had expected the Commonwealth to clean up contamination at the BSS site and transfer the property in clean condition. After the closing of BSS, but prior to its conveyance to BEDIC, the Commonwealth spent \$5 million partially cleaning up asbestos and other contaminants on the property, particularly at the BSS power plant site. As of April 4, 2001, BEDIC adopted a new course of action to acquire the property. Specifically, BEDIC voted to accept the property in "as is" condition, except for the Commonwealth's completing its final clean up and remediation of the power plant site and certain other conditions. BEDIC correspondence states that this change was made because of difficulties it anticipated in raising the money necessary to purchase the property in cleaned-up condition.

The Commonwealth agreed with this new proposal, and on April 12, 2002 Parcels B, D, and E were transferred to BEDIC for \$10, which was determined to be the full and fair market value of the property in accordance with Chapter 353 of the Acts of 1996. Chapter 353 provided for transferring the property at full and fair market value and required the Massachusetts Office of the Inspector General (OIG) to review and approve the appraisals performed in determining the full and fair market value, as well as examine the methodology used for the appraisal. The OIG approved the methodology used to appraise Parcel B at \$1,350,000 and the combined value of Parcels B, D, and E at \$1,920,000. As the estimated cleanup costs for Parcel B exceeded \$3 million, the OIG determined that the agreed-upon purchase price of \$10 appeared to satisfy the conditions of Chapter 353 of the Acts of 1996. The OIG also noted that BEDIC was acquiring a valuable piece of property for nominal consideration and that BEDIC cannot and should not expect the Commonwealth to assume any further liability and costs associated with the parcels after they are transferred to BEDIC.

After acquiring the property from the Commonwealth, the original BEDIC development plan provided for a number of uses for Parcels B, D, and E. Developers could receive incentives in the form of a 5% Massachusetts investment tax credit for commercial development, a 10% vacant building investment tax credit, and tax incentive financing to reduce real estate tax payments for a period of time, all as a result of an April 2000 town meeting that named the BSS land as an Economic Opportunity Area. In addition, a federal 20% Historic Tax Credit for refurbishing existing buildings could also be available to developers. Overall, the plan provided for the following general types of development:

1. Business Development: Commercial, business, light industrial and retail development opportunities exist within the site.
2. Assisted Living Facility: There has been considerable work on the development of a Senior Citizen Community that could include a variety of living options from independent sites to nursing homes to hospital facilities.
3. Education and Research: In conjunction with the above, educators from local colleges and universities may be interested in related education/research uses.
4. Municipal: The town may have short and long-term uses for the property that would be consistent with the proposed plan.
5. Government: The BEDIC will continue to work with State officials on specific uses of some property within the site, such as a proposed Hampshire County Court House.

In November 2004, a consulting team was engaged, consisting of Hunter Interests, Inc., of Annapolis Maryland; Carol R. Johnson Associates of Boston; and Elizabeth Taras, based in Belchertown. The team developed a Master Plan and Development Strategy for Parcel B that was published on September 15, 2005. This plan provided for a 150-room (with possible future expansion to 400 rooms) resort hotel and spa; a wellness center; a spa center; office and professional space; retail and restaurant facilities; mixed-use commercial space; senior assisted living facilities; equestrian facilities; and recreational and cultural amenities. The plan estimated that the development costs would be between \$80 million to \$100 million. On May 24, 2006, BEDIC entered into a Memorandum of Agreement that named Bridgeland Development LLC as master developer to implement the development of this plan. A purchase and sale agreement was signed to transfer the property to the developer for \$500,000, but the developer's deposit check of \$100,000 was returned for insufficient funds and never made good despite numerous opportunities to do so.

BEDIC has sold a number of parcels so far, as shown in the following chart:

<u>Parcel</u>	<u>Lot</u>	<u>Approximate Acreage</u>	<u>Sales Price</u>
E	Entire Parcel	43.659	\$125,001
D	Parcel D-1	2.565	125,000
B	1 & Partial 2*	3.280	145,000
B	3	1.500	148,500
B	4 & 5*	3.307	200,000
B	6 & 7	1.676	<u>77,500</u>
			<u>\$821,001</u>

\*Construction of municipal improvements in lieu of cash.

According to the Town Assessor's Office, the developed properties on Parcels B, D, and E should generate \$138,369 of annual tax revenues for fiscal year 2010, as summarized below:

<u>Parcel</u>	<u>Assessment as of January 1, 2009</u>	<u>Potential Tax Revenue</u>
B	\$1,861,500	\$25,987
D	853,900	11,920
E	<u>7,196,400</u>	<u>100,462</u>
Total	<u>\$9,911,800</u>	<u>\$138,369</u>

Our review disclosed various internal control deficiencies related to BEDIC's economic development projects and administrative issues, as discussed below:

## AUDIT RESULTS

### 1. DEVELOPMENT PLAN UPDATES NEEDED CONSIDERING CONDITION OF PROPERTY

BEDIC needs to develop a better plan as part of its redevelopment efforts. BEDIC's decision to acquire Parcel B in partially contaminated condition obligates either BEDIC or future developers to incur clean-up expenses. Parcel B development efforts were severely hampered when the developer, selected for the majority of the Parcel B improvements, failed to provide the second \$100,000 of its deposit money and could not obtain the approximately \$100 million of funding needed for the development effort. Additionally, BEDIC's decision to sell Parcel E for a relatively low price resulted in reduced revenue streams to fund future cleanup efforts. Lastly, the 2005 development plan suggesting that a resort spa be sited on the property is apparently unworkable (as evidenced by the failure of the selected developer, the results of a UMass Amherst review of the plan, and BEDIC's willingness to look into other development opportunities) as presented, and a new plan should be developed.

BEDIC acquired Parcels B, D, and E of the former BSS in April 2002. Parcel B was the main campus of the BSS that contained numerous old buildings and tunnels containing contaminants such as asbestos and lead paint. Parcels D and E were raw undeveloped land. When the Commonwealth was going to convey the BSS property to BEDIC, there were two options for how to handle the condition of the property. One option was to have the Commonwealth clean up the property and then turn it over to BEDIC at an appraised value. The other option was to turn the property over to BEDIC "as is" and have BEDIC be responsible for the remediation. BEDIC agreed to purchase the property in "as is" condition and use either the "pay as you go" method to fund future remediation or have developers be made responsible for site cleanup.



In March and April of 2001, BEDIC voted to adopt acquiring the parcels in “as is” condition, as found in the following motion that was approved:

*Move that EDIC adopt a new course of action and approach DCAM to transfer parcels B, D and E “as is” except for final clean up of the power plant.*

Since BEDIC accepted the property “as is,” BEDIC assumed responsibility for any remaining remediation of the property. In fact, correspondence from the OIG dated October 6, 1998 noted that BEDIC was acquiring a valuable piece of property for nominal consideration and that BEDIC “cannot and should not expect the Commonwealth to assume any further liability and costs associated with the parcels after their conveyance” to BEDIC.

BEDIC planned on achieving its clean-up efforts by either (a) selling parcels to generate income, using that money to clean up more property, selling those parcels, and repeating the process or (b) having developers be responsible for the clean up of the parcels they purchase. Unfortunately, BEDIC sold some of its prime property for substantially less than market value (see Audit Result No. 3) and the developer BEDIC chose for the main parcel with the most contamination did not have the capability to proceed with the project (see Audit Result No. 7). Additionally, BEDIC did not adequately secure the premises, inviting further deterioration (see Audit Result No. 5).

As a result of BEDIC’s inability to properly manage the development project, widespread clean up efforts were stalled, and only small parcels were sold by BEDIC, often for the price of improvements made. The combination of further deterioration and lack of clean up caused BEDIC to request and receive preliminary legislative approval for \$10 million of additional funds to clean up and secure the property under BEDIC’s control.

In September 2008, a team from the UMass Amherst, consisting of two professors and 29 graduate students, was reviewing the status of the property and hopes to present BEDIC with new development plan recommendations.

### ***Recommendation***

BEDIC should work closely with the UMass group regarding future development. Additionally, BEDIC should be in contact with other public, quasi-public (e.g., MassDevelopment), and private property development entities to determine the best uses for the property and the potential development opportunities that exist in the current economic climate.

## **2. LACK OF FINANCIAL COMMITMENT**

As previously noted, in 1992 a Belchertown town meeting created an Economic Development Industrial Corporation, which became known as BEDIC, and an Industrial Development Finance Authority (IDFA). The purpose of those organizations was to develop, implement, and finance an Economic Development Plan, with an emphasis on the former BSS property. BEDIC entered into its massive property redevelopment efforts with limited financing. At that time, BEDIC had the option of obtaining Industrial Development Finance Agency (IDFA) funding, but chose not to use it. Had BEDIC accessed such IDFA funding, other options would have been available to it to facilitate the property development and marketing. Specifically, the IDFA could have accessed funding through low-cost borrowing that would be repaid later. Although the IDFA was authorized to do so, BEDIC never requested any funding through this option. Instead, BEDIC chose to self-fund operations with the “pay as you go” method, (see Audit Result No. 1).

Since BEDIC decided on self-funding the development, it relied on a part-time board of volunteers to administer the development process of a 263-acre project involving a number of old structures rather than hire a full-time professional developer to act as project manager and possibly a part-time administrative support person. Additionally, BEDIC had incurred mounting expenses, particularly legal expenses, with the development project. The increasing amount of such legal and engineering expenses were cited as one of the reasons for selling Parcel E for less than could have been realized (see Audit Result No. 3).

### ***Recommendation***

BEDIC should reevaluate its financial position, including projections of estimated revenues and expenses, and determine whether it wants to pursue other sources of financing to aid in development. This analysis should also include a determination on the potential benefits of hiring a full-time project management company that will be able to devote the necessary resources to develop this property.

## **3. INSUFFICIENT REVENUE GENERATED FROM SALE OF PARCEL E**

As previously noted, one of the parcels that BEDIC acquired from the Commonwealth was Parcel E, which consisted of approximately 44 acres of undeveloped land. We found a number of issues with BEDIC’s handling of this property. Specifically, (a) its appraised value may have been too low; (b) the property was sold below its appraised price subject to the developer making improvements that were not made as stipulated; (c) the appraisal price was already discounted for lack of infrastructure;

(d) there was a questionable selection process for the developer of Parcel E; (e) the developer that bought the parcel realized a substantial profit for doing work that BEDIC possibly should have done; (f) BEDIC could have generated funds to pay outstanding obligations using other methods rather than just selling this parcel at a low price; and (g) BEDIC did not take steps to ensure that the promised infrastructure improvements were made as required by the terms of the sale. Based on these issues, BEDIC did not maximize its potential revenue in the sale of this property, which resulted in fewer proceeds being generated. Since BEDIC was self-funding improvements to the entire property, the ripple effect was that funding was not available to clean up contaminated areas and generate further property sales. Also, since promised infrastructure improvements were not made, further development of Parcel D, which BEDIC still owns, has been impacted. A further discussion of these issues follows.

a. Appraisal Value Appears to Be Low

Our review disclosed that the appraised values that were used to help establish the market value and therefore the sales price of Parcel E appeared to be low. Factors affecting the low market price include the use of comparable values (comps) that were three or more years old during a period in which real estate prices had been steadily increasing and the lack of inclusion of comps for other property in the area that indicated a higher value for property, as discussed below.

There were two appraisal reports prepared in contemplation of the sale of the BSS to BEDIC. One appraisal was done on March 1, 1996, and the other was done on August 15, 2000. Additionally, DCAM had another firm review the appraisal methodologies used and update the property values. The August 15, 2000 appraisal valued parcel E at \$330,000, based on the assumption that the highest and best use of the property would be commercial development. The appraiser looked at six comparable property sales: five that closed in 1999 and one that closed in 2000. The appraisal reports included two incorrect dates on their comparable sales: one indicated that the property sold on February 14, 2000, and the other indicated it sold on April 24, 1999. According to Registry of Deeds information, the February 14 property actually sold on August 27, 1999 (recorded on February 14, 2000) and the April 24, 1999 property actually sold on April 3, 1998 (recorded on April 24, 1998).

Since BEDIC's determination of the developer sales price for this parcel was based, in part, on these appraisals values, the use of older comps that did not reflect current market conditions may have resulted in BEDIC's underestimating the market value of the property. Real estate prices in Massachusetts sharply rose in the late 1980s, declined in the early to mid 1990s, and then started

increasing again in the late 1990s and into the early 2000s. When BEDIC sold this parcel in April 2002, prices had been steadily rising. Accordingly, the use of comparable property values from three to four years old resulted in an underestimated appraisal that did not accurately reflect market values.

Another factor affecting the lower appraised value for Parcel E was that other comps for properties in the area indicated a higher market value. We reviewed some Belchertown property sales to determine whether the comparables used for the appraisal reflected actual market value. We limited our review to Belchertown property and did not include the general area, as the appraisers did, so that we could compare similar market area properties. We recognize that, even in the same community, different parcels of real estate have unique attributes that affect their value on a parcel-by-parcel basis. However, we did find a sale of 7.354 acres for \$300,000 on November 14, 2001. This sale took place after the appraisal dates, but before the Parcel E sale closed. In addition to having smaller acreage than the Parcel E property, there were also restrictive covenants<sup>1</sup> placed on the sale, which limited marketability of this property. However, it did have access to town water and sewer connections with about a 300-foot hookup, unlike Parcel E, which required a longer hookup run. We also found another property sale that took place on April 5, 2000, which was prior to the appraisal date but not included as a comp. Although this was a small parcel of 1.65 acres, it also sold for \$300,000. We first thought that this property might not have been considered in the appraiser's report because of its small size. However, we found that the appraiser did include a 2.19-acre property as a comparable.

At about the same time as BEDIC was negotiating selling Parcel E for what amounted to \$2,863 per acre, BEDIC was using a sales price of \$70,000 per acre when estimating potential revenue and expenses with respect to purchasing the entire property from the Commonwealth.

b. Sales Price Below Appraisal and Improvements Not Made

BEDIC sold Parcel E for \$125,001 (well below the appraised value of \$330,000) with provisions requiring that the purchaser install 2,200 feet of water and sewer lines, install a sewer pumping station, conduct a traffic study, and install a traffic light. BEDIC justified the lower sales price of the property by considering that the additional infrastructure improvements the purchaser was to install had a value of about \$800,000 and would further development on the Parcel E property as well as service further development on Parcel D across the street. However, the developer did not

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<sup>1</sup> The restrictive covenants provide that the premises cannot be used for a supermarket or limited assortment discount food store.

fulfill most of the required obligations. Specifically, the pumping station was built with a smaller pump than what was specified, approximately 500 feet less than 2,200 feet of water and sewer lines were installed, a traffic study was not conducted, and a traffic light was not installed. A town official estimated that the developer only spent a total of about \$150,000 to \$200,000 for the pumping station, water lines, and sewer lines. We did not review the developer's records, so we cannot confirm what was actually spent. However, it is evident that BEDIC abdicated its responsibility to ensure that the buyer fulfilled his obligations under the sales agreement. As a result, BEDIC did not realize the benefit of the proposed infrastructure improvements it thought it would achieve after selling the property for a substantial discount.

c. Appraisal Value Already Discounted for Lack of Infrastructure

In calculating a sales price for Parcel E, BEDIC further reduced the value of the property due to the lack of town water and sewer infrastructure. However, the August 15, 2000 appraisal report correctly acknowledged the lack of public utilities at parcels D and E in arriving at the estimated market value of the properties. Whenever a developer buys a property such as this, there are often infrastructure improvements that are necessary. For BEDIC to reduce the property value for infrastructure improvement costs appears improper, since this is traditionally a developer cost that should be factored into the purchase price of the property.

d. Selection Process for Parcel E Developer

The selection process for the Parcel E developer appeared flawed in that BEDIC could not demonstrate that it undertook sufficient efforts to market the property. Accordingly, BEDIC had an insufficient pool of bidders expressing interest in the property to reflect open market prices. Since Parcel E is such a prime piece of real estate and BEDIC was in need of funds both to pay outstanding obligations as well as generate as much revenue as possible to fund further remediation and development efforts, BEDIC's selection of a developer that appeared to have little development experience is questionable. We were not provided with any information indicating that the Parcel E developer had a proven track record for such a key property development. In fact, we found that the developer had issues with the building it erected on about a ½ acre portion of the 44-acre parcel. Specifically, liens were placed on the property because of non-payment to contractors, and building tenants complained of heating problems and broken pipes due to water freezing.

e. Sale of Parcel by Developer for Substantial Profit

The developer that bought the 44-acre Parcel E for \$125,001 on April 12, 2002 may have made a profit of approximately \$1.9 million. We estimated this potential profit based on the developer's property sales of \$3 million minus expenses of a little over \$1 million (as discussed in more detail below). Since BEDIC was relying on the use of the proceeds from property sales to fund future remediation and development activities, it missed a substantial revenue opportunity.

We did not perform a review of the developer's accounting records, but we did use publicly available information (e.g. Registry of Deeds, Town Assessor's Office) to estimate profit amounts and calculated the profit amount based on the following:

- The developer bought the 43.659-acre parcel for \$125,001.
- The developer built a combination bank/office building on approximately a ½ acre part of the property for \$770,000 (although the amount actually paid could be less due to the settling of the previously described liens).
- The developer installed water and sewer lines and a sewer pumping station (although, as previously noted, these did not meet BEDIC's specifications).
- The developer subdivided Parcel E into two parcels and generated \$3,048,200 by selling the property to two other developers. One developer bought approximately 36 acres, and the other developer bought approximately seven acres.

Since the subsequent developers have purchased their segments of the original property, a substantial amount of development activity has taken place. The developer that purchased the seven-acre parcel has built one building that houses the Eastern Hampshire (Belchertown) District Court and another building that houses the Community Corrections Center. The developer that bought the 36-acre parcel is building a gas station, has sold off parcels that were developed into a lumber company and a farm equipment supplier, and has land remaining for future development activities.

We understand that developers need to be compensated for the risk they take and the expenses they incur relative to developing property. However, the original developer that purchased the 44-acre parcel appears to have been more than adequately compensated for doing the development work that BEDIC could have done itself.

Although some BEDIC officials agreed with our conclusions regarding the sale of Parcel E, others contended that BEDIC had to sell Parcel E to show progress with development activities,

get interest in Belchertown as a development site, and generate revenue to pay outstanding obligations.

f. BEDIC Could Have Generated Funds from Timber Sales on Parcel E

As noted above, certain BEDIC officials have asserted that BEDIC had to sell Parcel E to pay off outstanding obligations for engineering fees, legal fees, and liability insurance. Although we recognize that BEDIC did owe money to others when it sold Parcel E, we believe that there were other ways in which to pay off those obligations rather than by selling the prime Parcel E at an extremely low price. For example, as noted in Audit Result No. 2, BEDIC had access to IDFA bond funding to obtain working capital during the development process. Another revenue generating option for BEDIC was to sell off timber from this parcel. In fact, BEDIC did sell timber from Parcel D, across the street, in April 2003 and netted approximately \$50,000. Parcel D was a larger property than Parcel E (56 acres vs. 44 acres), but Parcel D contained an estimated 20 acres of wetlands. Although we understand that the timbering process takes time (awarding a contract, hiring a certified forester to oversee the process, and actually cutting trees) we believe this was another viable source of potential revenue available to BEDIC that it did not avail itself of, but instead allowed subsequent developers to generate any potential timber revenue.

g. BEDIC Did Not Secure the Developer's Promised Infrastructure Improvements

BEDIC did not exercise its fiduciary responsibility to ensure that promised infrastructure improvements were completed. As previously noted in Section (b), BEDIC justified selling Parcel E below its appraisal value on the basis that it would benefit from approximately \$800,000 in infrastructure improvements, including 2,200 feet of water and sewer lines, a sewer pumping station, a traffic study, and a traffic light, that were not made as required. BEDIC minutes indicate that these planned improvements would help future development of both Parcel E as well as Parcel D. BEDIC devoted much attention to the binding of the contractor to perform the infrastructure repairs through a mortgage or performance bond (see the Appendix for summary of review). However, we believe that the best first step to help ensure that the contractor would install the necessary infrastructure would have been to have covenants attached to the deed at the time of closing. The performance bond or mortgage would then provide additional security to ensure the developer's performance.

***Recommendation***

BEDIC missed an excellent opportunity to generate revenue from the sale of property located on what was known as Parcel E. In the future, BEDIC should establish a process of obtaining competitive proposals for the sale of the remaining parcels. BEDIC should also determine whether potential sale prices are reflective of market values. Any adjustment of sales prices for infrastructure improvements should be carefully considered to determine whether it is really an expected developer's cost or whether a sales price adjustment should be made. Lastly, if infrastructure improvements are agreed to as part of the terms of purchase, BEDIC should consider legally recording the covenants and monitoring them to ensure they are fulfilled.

**4. QUESTIONABLE PAYMENTS TO MASTER PLAN CONSULTANTS**

BEDIC made consultant payments totaling almost \$12,000 during the period of July 1, 2006 to June 30, 2008 without benefit of a contract and with insufficient supporting documentation to support the payments. Also, BEDIC could not provide us with formal contracts delineating the scope of work to be performed and a final work product. As a result, BEDIC cannot support the almost \$12,000 in consultant payments made during this period.

- In November 2004 BEDIC hired the firm Hunter Interests Incorporated (HII) to prepare a Master Plan and Development Strategy for \$270,000, which it finished in September 2005. The on-site representative for HII was also listed as the Senior Vice President and Chief Operating Officer. This individual left HII and formed a company called Strategy 5 on January 27, 2006. BEDIC continued to employ Strategy 5 at an hourly rate of \$100 prior to January 2007 and \$140 afterwards. Billing invoices for this work were vague, with descriptions such as "professional time" with the number of hours and the billing rate. We also noted that a BEDIC board member questioned a particular consultant's billing dated May 2, 2008 totaling \$1,100 for services provided during March and April 2008. The BEDIC Chairman replied:

*The BEDIC voted this year to authorize Ernie to work with the MBA's to interpret the Hunter Interests study documents. The cost was "not to exceed" \$1,100.*

- BEDIC also paid a former Associate Member for 9.5 hours work at \$90 per hour on September 26, 2007 without benefit of a written contract or Memorandum of Agreement to type of work or scope of services provided. This work was performed in preparation for requesting bond funding regarding the resort development and general clean up funding.

In summary, the payment to the firm involved with the Master Plan and Development Strategy is questionable because supporting documentation to justify the time spent was inadequate.



Additionally, the individual from this firm was involved with the Master Plan and Development Strategy that other groups determined was not feasible. Lastly, BEDIC did not provide us with formal contracts delineating the scope of work to be performed and a final work product. Accordingly, we question the need to pay for these services.

### ***Recommendation***

Future consultant contracts should be formalized to delineate the scope of work to be performed by the consultant. We also recommend that BEDIC obtain adequate documentation to support consultant billings and final work products.

## **5. CONTROLS NEEDED OVER SECURING UNSAFE AND UNOCCUPIED BUILDINGS**

BEDIC is custodian of many of the buildings occupying the former BSS site located on what is known as Parcel B. Many are currently unused, in various stages of disrepair, and unsafe. Our tour of the former BSS campus noted that BEDIC posted the buildings with “No Trespassing” signs. When BEDIC assumed control of the buildings from DCAM in 2002, they were either in a secured condition or were secured by BEDIC’s installation of door locks and fences around these buildings. The buildings have since been vandalized and are now easily accessible by the general public through unlocked doors, broken windows, and open fencing. Failure to adequately secure and maintain these buildings diminishes the likelihood for building reuse and increases the potential for personal injury claims. Moreover, provisions of the Massachusetts State Building Code and the General Laws require property owners to adequately secure unoccupied or unsafe buildings in order protect the community and its residents from unnecessary exposure or harm.

In September 2005, the Master Plan and Development Strategy was completed for BEDIC by its consultant, HII. Included in the HII report was an evaluation of each building’s preservability that identified the M and G dormitories, infirmary, hospital, cottage, and administration buildings as preservable, needing only minor work to be reused in the proposed development strategy. The HII report further describes dormitory G as follows:

*The youngest of the dorm buildings (Building G) sits on a knoll that would provide a perfect spot for a state-of-the-art Wellness Center providing multilevel fitness equipment and amenities, elegant spa facilities, and unique mind/body programming called Quantum Life Management.*

HII also identified the school and gym building as a candidate for preservation possibly needing major work:

*Undoubtedly the most recognized and beloved building on the BSS site, the former Theater/School Building also housed a swimming pool and a bowling alley. It provided the community with a grand auditorium and could once again see a future as a museum and for theatrical and community assembly.*

Since the consultant's completion of the Master Plan and Development Strategy promoting reuse of some existing buildings, BEDIC has not taken action to prevent further deterioration of those structures, while other buildings identified by the consultant as not suitable for adaptive reuse may now be structurally unsound.

In addition to the recurring vandalism, arson to the maintenance building in 2006 prompted BEDIC, in the spring of 2007, to spend \$4,610 to purchase and post "No Trespassing" signs on its buildings and to install a gate with padlocks to prevent further abuses. Two individuals were prosecuted for the 2006 arson. Although BEDIC took some measures to try to protect its buildings, its actions proved ineffective. In December 2007, another fire was intentionally set in a dormitory building; recent site visits show many of the buildings are still accessible through open doors and windows even though these openings are flanked by "No Trespassing" signs; and many of the structures walls have been tagged with graffiti.

Section 780 of the Code of Massachusetts Regulations 121, established by Chapter 143 of the General Laws, stresses the importance of protecting the public from unsafe structures, acting through the local building official. Specifically, owners of abandoned or unsafe structures, upon notification by the building official, are required to immediately correct safety concerns or demolish the unsound structures. These provisions also allow for financial penalties should the owner not take corrective measures.

### ***Recommendation***

BEDIC should take steps to better secure its unoccupied buildings. These steps should include boarding up broken windows and doors, securing fences, and preventing additional water penetration into the structures. Also, BEDIC should consider hiring a security firm to periodically patrol the site to monitor building access and deter additional vandalism to protect public safety.

## **6. POTENTIAL NONCOMPLIANCE WITH STATE CONFLICT-OF-INTEREST LAW**

Our audit identified situations that raised concerns relative to compliance with Chapter 268A of the General Laws (the state's Conflict of Interest Law). Specifically, our review disclosed that certain

individuals participated in matters in which they either may have had a financial interest in BEDIC transactions or could cause the general public to perceive such a conflict. BEDIC was established under Chapter 121C of the General Laws; accordingly, its members are deemed to be special municipal employees in accordance with Section 3 of Chapter 121C and are therefore subject to Chapter 268A. In this regard, we noted that BEDIC does not have a conflict-of-interest policy, as suggested by the Massachusetts Attorney General, to help ensure compliance with this law, as described below:

a. Board Member's Spouse and Real Estate Commissions:

The sale of Parcel E to a developer was presented through a local real estate firm. The spouse of a BEDIC board member previously owned the real estate firm that the offer came from and was the office manager for the firm at the time of negotiations and sale of the property. The developer was to pay an 8% commission based on the cost of the planned water and sewer improvements (estimated to be approximately \$600,000 by the Belchertown Department of Public Works), which would result in a real estate commission payment of approximately \$48,000. The current BEDIC Chairman told us that the board member's spouse was not going to be entitled to any share of the commission payment because of her position as office manager. The board member did take appropriate steps by notifying BEDIC that he had received information from the State Ethics Commission that this did not constitute a conflict of interest and stated in a letter to BEDIC that he would nonetheless withdraw from discussions involving his spouse's real estate firm to help avoid the appearance of any conflict of interest. However, we noted that the board member did participate in subsequent meetings during which discussions regarding the sale and financing to the developer of Parcel E took place. Therefore, the general public could perceive this relationship as a potential conflict of interest. (It should also be noted that we were told that the purchaser of Parcel E never paid the commission, further calling into question the financial viability of the purchaser discussed in Audit Result No. 3.)

b. Board Member's Spouse and Legal Services

The spouse of another BEDIC board member works at the law firm that BEDIC hired to provide legal services. Moreover, the board member voted on the legal contract and approved bills from the law firm. During fiscal years 2007 and 2008, the law firm was paid approximately \$54,000. Additionally, we found instances in which the law firm billed delivery charges for the board member's spouse to deliver legal papers to BEDIC at an average hourly rate of \$105.

c. Board Member's Son and Engineering Work

The same board member referred to in Section (b) above has a son who works for a land surveying and engineering company. This engineering company performed work for purchasers of parcels for development, including developing site plans, drainage reports, site plan applications, and proposed signage. Since the purchaser of the property paid the engineering company and not BEDIC, the amount that the engineering firm was paid for this work is not known. However, other engineering firms with whom we spoke estimated that the cost of such work would probably be in the range of \$5,000 to \$20,000 per parcel but could go up to \$100,000 per parcel, depending on the specific factors of the case. We noted that the board member's son signed cover letters submitting engineering company documents to the Belchertown Planning Board for potential developers of BEDIC property while the board member also participated in the matters representing BEDIC as the designated owner of the property for which these applications were being sought by the developers. We were not provided with any evidence that the board member had disclosed this matter to BEDIC.

***Recommendation***

We recommend that BEDIC adopt a conflict-of-interest policy and seek guidance from the Office of the Attorney General and State Ethics Commission in this regard. Additionally, BEDIC should disclose the above circumstances to the State Ethics Commission so that they can determine whether any conflicts of interest existed and take whatever action it deems appropriate in the circumstances.

**7. LACK OF DUE DILIGENCE IN CHOOSING DEVELOPER**

BEDIC selected the developer of the \$100 million Parcel B development without sufficiently considering the ability of the developer to complete the job. Moreover, the developer is reported to have had past business relationships with the consultant that was used to select the developer. Also, the developer submitted a \$100,000 insufficient funds check as partial payment for the project. A further discussion of these two issues follows.

a. Relationship Between Consultant and Developer

According to published reports<sup>2</sup>, the consultant that was paid \$270,000 to help prepare the Master Plan and Development Strategy and review potential developers qualifications had past relationships with a principal of the firm chosen as master developer. BEDIC members

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<sup>2</sup> "Consultant Had Dealings with Developer," *Daily Hampshire Gazette*, August 1, 2007; "No Way to Do Business" *Daily Hampshire Gazette*, August 14, 2007

acknowledged awareness of the relationship between the two parties, but did not do an in-depth review of the relationship or the developer. Furthermore, the published reports note that in at least two instances (a performing arts center in Orlando, Florida and a civic center in Jacksonville, North Carolina), development of the projects never materialized.

The developer and BEDIC signed a development agreement in May 2006. At that time, demolition and remediation work was to start in the fall of 2007, new construction starting in spring 2008, and a grand opening anticipated for the summer of 2009. However, the developer was unable to obtain financing for the project. The developer contends that the financing could not be obtained because BEDIC would not give control of the property to the developer. BEDIC, on the other hand, indicated that it did not want to relinquish control of the property until it was satisfied that financing was in place. Since BEDIC is a part-time board staffed entirely by volunteers, it relied on the consultant's recommendations for whom to select as the developer.

b. "Insufficient Funds" Deposit Check from Developer

Ongoing negotiations between BEDIC and the developer resulted in the \$500,000 Purchase and Sale agreement not being executed until September 26, 2007. A total of \$100,000 was deposited in escrow and released to BEDIC on October 10, 2007 through the BEDIC attorney. The developer provided another \$100,000 check to BEDIC dated October 8, 2007, which was deposited at BEDIC's local bank on October 16, 2007 and returned as "insufficient funds" on October 22, 2007.

It became apparent that the developer did not have the financial commitment to proceed with the project. However, BEDIC continued to pursue negotiations with the developer and did not promptly sever ties. We question why it took eight days to deposit the developer's check into the bank (October 8, 2007 to October 16, 2007) and why BEDIC did not either sever ties with the developer at this point or pursue active collection efforts.

BEDIC officials contended that they had invested a lot of time and effort up to this point and thought that removing the developer over the insufficient funds check would be counter-productive.

***Recommendation***

BEDIC should consider supplementing its part-time volunteer board with other resources to aid in development work. Such assistance may be provided by either hiring an administrator or consulting

with Commonwealth officials. Additionally, these resources could be used to help determine the financial soundness and viability of potential developers to help ensure that funds promised are actually paid. We also recommend that BEDIC establish a policy of requiring a certified check or cashier's check in payment of deposit funds for proposed land sales. Lastly, we recommend that future deposit checks be brought to the bank promptly so that BEDIC will be aware of the status of funds available on a timely basis.

## **8. IMPROVEMENTS NEEDED IN INTERNAL CONTROLS OVER CERTAIN ADMINISTRATIVE OPERATIONS**

We found that although BEDIC has adopted a number of policies and procedures and has established internal controls over certain administrative operations, further improvement could be made. According to Generally Accepted Accounting Principles (GAAP), entities such as BEDIC should establish and implement an adequate internal control system within the organization to ensure that goals and objectives are met; resources are used in compliance with laws, regulations, and policies; and assets are safeguarded against waste, loss, and misuse. Specifically, we found that BEDIC could make improvements with respect to (a) its accounting system, (b) maintenance of minutes of meetings, and (c) compliance with audit requirements. Without sufficient controls over its administrative operations, the Commonwealth and the Town of Belchertown cannot be assured that BEDIC's funds were properly safeguarded against loss, theft, and misuse and were expended for their intended purposes.

### **a. Accounting System Improvements Needed**

BEDIC has made progress in the maintenance of its accounting system by implementing an Excel spreadsheet that reflects budget data with actual data and compares them with each other and to projected results for the remainder of the year. However, this spreadsheet only tracks income and expense data and is not a full set of accounting records. This situation could be readily improved through the purchase of a relatively inexpensive "off the shelf" accounting software package (e.g., QuickBooks, Peachtree). Properly used, such a package would provide a full set of accounting records and would include balance sheet accounts such as cash, accounts receivable, accounts payable, and fund balance.

b. Maintenance of Board Meeting Minutes Needs Improvement

BEDIC records activity of board meetings in minutes that are properly documented and approved at subsequent meetings. However, certain minutes were not always available for review. For example, when BEDIC decided to have a board member review the status of a developer's activity on the Parcel E sale, the board member found that a number of minutes not available for review. The board member specifically reviewed session minutes from March 21, 2001 through December 18, 2002 as well as April 5, 2006 and May 3, 2006 (as these were the months pertinent to the subject of review) and found that official board minutes for April 5, 2006 and May 3, 2006 were not available. The board member also found that the Town Clerk had not received Executive Session minutes for November 7, December 5, and December 12, 2001 and January 30, 2002.

c. Noncompliance with Audit Requirements

BEDIC is organized as an Economic Development and Industrial Corporation in accordance with Chapter 121C of the General Laws. Section 4 of that Chapter requires such corporations to have "an audit of its books and accounts to be made at least once in each fiscal year by certified public accountants . . . ." However, BEDIC has not had an audit prepared, but rather had financial statements compiled by a certified public accountant for fiscal years 2004 through June 30, 2007.<sup>3</sup> According to Generally Accepted Auditing Standards, a compilation is a lower level engagement than an audit and, therefore, provides a lower level of assurance about the financial statement than audited statements would.

Additionally, BEDIC had received and spent a \$185,000 grant from the Commonwealth's Department of Business and Technology as of July 1, 2004. One of the requirements of this grant is that BEDIC was to submit audited financial statements. However, BEDIC provided only copies of financial statements that, as previously described, were compilation statements and did not provide the same level of assurance as audited financial statements would.

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<sup>3</sup> The first short fiscal year that BEDIC had financial statements prepared covered the period April 4, 2002 to June 30, 2003 and these were reviewed statements, not compiled statements.

***Recommendation***

We recommend that BEDIC implement a complete accounting system in accordance with Generally Accepted Accounting Principles. With respect to minutes of board meetings, BEDIC should review its procedures for ensuring that official minutes are maintained and transmitted to the Town Clerk. Lastly, BEDIC should have an audit conducted of their financial statements in accordance with Generally Accepted Auditing Standards, rather than a compilation.



## APPENDIX

### Chronology of Parcel E Infrastructure Review

One of the BEDIC board members conducted a review of the process relating to the pumping station on Parcel E. The board member attempted to determine why this infrastructure improvement was not made and issued a report to the full BEDIC board dated February 20, 2008. Key portions of that report follow.

- Executive Session, June 6, 2001—The developer approached BEDIC with an offer to purchase 10 acres of parcel E for \$350,000 with a five-year option to purchase the remaining 32 acres for \$150,000. BEDIC then chose to continue negotiating with the developer, but changed the terms to selling 10 acres for \$570,000 with the condition that “town water and sewer be brought to the intersection of Routes 21 and 202 by the Town of Belchertown at the town’s expense.”
- Public Meeting, June 15, 2001—Town estimates of the cost of the pumping station, water lines, and sewer lines were presented totaling \$766,800.
- Executive Session, June 15, 2001—BEDIC to present a counteroffer to the developer with two options: Option A (selling 10 acres for \$600,000 with BEDIC installing the water and sewer lines) or Option B (selling 10 acres for \$200,000 with the developer responsible for installation of water and sewer lines).
- Executive Session, June 27, 2001—Negotiations continue with the developer offering \$1 for all 44 acres with the conditions that the developer be responsible for: installation of a traffic light (up to \$100,000); providing bonding for the water and sewer project up to \$800,000; paying an 8% sales commission based on the value of improvements; and paying an additional \$100,000 after development.
- September 5, 2001—BEDIC unanimously voted to sell Parcel E to the developer subject to the Terms and Conditions of the Purchase and Sale Agreement of September 1, 2001. That Agreement provided for: a purchase price of \$125,001; a promissory note and mortgage to be given at the time of closing to cover the cost of the water, sewer, and pumping station; the developer installing the pumping station and 2,200 feet of water and sewer lines up to a maximum cost of \$800,000 subsequent to closing; the developer to make reasonable efforts to obtain a commitment letter from an institutional lender for financing subsequent to closing; and lastly at the time of closing, a separate agreement be made to cover those conditions that were contracted to be done subsequent to closing or not capable of being performed before closing.
- November 7, 2001—Reference made to developer’s delays in obtaining financing. BEDIC considered dropping the developer, but decided it would need to pay for the infrastructure work. Therefore, BEDIC decided to continue working with the developer.

- April 3, 2002—The BEDIC board member negotiating with the developer instructed the BEDIC attorney to drop the mortgage requirement to secure the infrastructure improvements. It was subsequently suggested that this change happened because the requirement could create a problem with the developer's financing.
- April 16, 2002—In place of the dropped mortgage requirement, an agreement was made to construct the "improvements" for Parcel E as approved by the planning board on February 26, 2002.
- July 24, 2002—The developer presented a performance bond for the water and sewer infrastructure work in the amount of \$518,700.
- September 4, 2002—BEDIC notified that the contractor that was going to do the work and that the performance bond was no longer valid.
- Public Meeting, April 5, 2006—Discussions held about who would be responsible for building the pumping station since the original developer subdivided and sold Parcel E to two other developers. The BEDIC Chairman contended that the original developer was responsible and that responsibility transferred to the new owners. The BEDIC Chairman also noted that this would be discussed at a Planning Board meeting on May 9, 2006.
- Planning Board Meeting, May 9, 2006—Discussions held about whether the pumping system should be build as originally planned. The Planning Board noted that site plan owners could file applications for amended plans. The two new developers subsequently filed amended plans that were approved. The new plans provide for the sewer pumping system that was installed and smaller than the originally proposed system.