



OFFICE OF THE CONTROLLER

***Convention and Visitors Bureau
Review of Market Square Properties
Development, LLC
Lease Agreement
Dated April 23, 2021***

Walter Griffith, Jr.

Luzerne County Controller

August 1, 2022 updated August 25, 2022

Table of Contents

Background	3
Objective and Scope	3
Methodology	4
Findings	4-6
Recommendations	5-6
Home Rule Charter § 3.08(C)(3)	7
Audit Response	7
Distribution Page	8

Background

The Luzerne County Convention and Visitors Bureau (Visitors Bureau or Luzerne County Visitors Bureau, lessee) entered into a lease agreement dated April 23, 2021 with Market Square Properties Development, LLC (lessor).

Market Square Properties Development, LLC has a location listed in the lease as 33 South Wilkes Barre Boulevard, Suite 4, Wilkes Barre, PA 18702. The Project Developer has been noted as George Albert.

The property being leased is the old Lehigh and Susquehanna Railway Station (Central Railroad of New Jersey). It was bought by the Luzerne County Redevelopment Authority from Thom Greco and affiliated companies in 2006 for 5.8 million dollars and listed for sale in 2014 for 1.88 million. The final sale price in 2016 was 1.2 million.

The County although discussing the train station for many years as a future site, entered into lease negotiations in March 2021.

Objective and Scope

The objective of this review was to ensure that lease provisions and agreements were followed in accordance with the executed lease.

A summary of some lease highlights include the following:

- The lease commences upon possession on or before December 15, 2021 and possession occurs upon completion of tenant improvements.
- 5 year term
There are two renewal options.
- Rent is paid on 1st of the month.
- Base rent is \$2,700 per month.
- Common area charges shall not exceed \$2.00 per square foot
- Lessee will pay all utilities and insurance.
- Space is 2100 square feet.
- The lease exhibits A and B include overview of tenant improvements
- The lease contains a \$30,000 allowance for finishes.
- Approved on April 13, 2021 by Council resolution 2021-64.

The lease agreement section XII, termination, subsection 4 states that the lease is predicated on timely construction of premise detailed in Exhibits A and B; failure to construct the premises by December 15, 2021 will cause the Lessee to incur damages. The lessee has two options: terminate the lease with no penalties or extend construction date and lease commencement by up to 6 months. The lessor shall pay liquidated damages in the amount of \$180 per day.

Methodology

Obtained a copy of the lease from Luzerne County and obtained proof of date of move or occupation of premises by the Visitor's Bureau.

Comparison of dates and amounts incurred as damage.

The Luzerne County Controller's Office strives to objectively and systematically evaluate functions, procedures, and activities to ensure that each are executed in the best, most efficient way. Our reviews are tailored to the unique circumstances of each office, and we work with management to ensure accountability and direction.

The Luzerne County Controller's Office is authorized by the Home Rule Charter of Luzerne County (Charter) Section 3.08 to conduct fiscal, performance, management, contract, grant, compliance, and related audits of any County division, bureau, office, agency, board, commission, elective office, The Judiciary, Office of Court Administration, or other administrative office. This review is an internal function, authorized by the Charter. Therefore, the Controller is required to transmit this review to the Manager of Luzerne County and County Council and post it for public inspection in the Controller's Office and on the County website and/or other electronic medium for a period of at least 60 days after it is issued. The Controller will also follow up on any recommendations, to the extent practical, in order to determine if they have been considered and/or implemented.

Auditors assigned to the engagement are employed by Luzerne County under the Controller's Office and report directly to the elected Controller. The audit staff is considered organizationally independent to conduct and report on the audit.

Finding 1: Date of premise completion and occupancy was after December 15, 2021

Upon reviewing the dates, it was noted that the Luzerne County Convention Bureau began to move in on January 26, 2022 and utilities were turned over on February 2, 2022. There was a Temporary Occupancy Permit issued by the City of Wilkes-Barre on February 9, 2021 that allowed for the County to occupy the facility.

Effect/Result

The lessor did not reimburse the County for the liquidated damages clause of the lease. The result is the lessor owes the County \$7,380 equivalent to \$180 a day at 41 days.

Cause

The lease was not adhered to and the liquidated damage funds were never submitted.

Recommendations

The Controller's Office recommends reimbursement of the \$180.00 for 41 days (\$7,380) by the lessor in a timely manner.

Response

Alan Stout, The Executive Director of the Luzerne County Convention and Visitors Bureau provided a list of in kind work performed by the Developer and Lessor in exchange for the reimbursement. The total amount of exchanged work was listed by Mr. George Albert as \$22,725. In addition, Mr. Stout said the February 2022 lease payment was forgiven as well. There was no approval by County Council or County Manager authorizing this exchange of services for payment of the penalty clause in the lease agreement.

Note

The Controller's office could not locate any authorization by the Manager or Council to authorize exchange goods or services or any accounting for the exchange.

Finding 2: No County Council approval for lease options in the termination clause, upon exercise of the clause.

Upon reviewing the extension of the lease, County Council approval was not found to exist in support of either the two options. The options were: terminate the lease with no penalties or extend construction date and lease commencement by up to 6 months.

Effect/Result: The result of not obtaining County Council approval is that the options selected were not authorized and a violation of the Luzerne County Home Rule Charter,

Section 2.09 Powers and Duties of Council:

- A. County Council shall have and may exercise such legislative powers and duties as are conferred or imposed upon it by this Charter, the Administrative Code, and other County ordinances or resolutions, and those generally conferred or imposed upon County governments in the Commonwealth of Pennsylvania by applicable law to the extent they are not inconsistent with the provisions, spirit, and purpose of this Charter. Specifically, County Council shall:

B. B-6. To approve, by resolution adopted by affirmative vote of at least a majority of its current members, agreements to acquire, lease, sell, convey, vacate, or abandon land, buildings, or other real property.

Cause: Lack of oversight by management whereby rules and procedures as outlined in the Luzerne County Home Rule Charter were not adhered to.

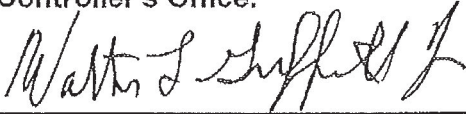
Recommendations: County Council address the issue and suggest corrective action with County Manager, Division Heads and department heads.

Luzerne County Home Rule Charter: Section 3.08 (C) 3

The audited entity shall respond in writing, specifying agreement with the audit findings and/or recommendations or the reasons for disagreement with the findings and/or recommendations, along with any plans and timetable for implementing remedies. The response shall be provided to the Controller within 14 days after the audited entity's receipt of the draft audit. The Controller shall include the audited entity's response in his/her final audit report.

There was a Final Audit Exit Interview on August 9, 2022 and an additional 2 weeks' time allotted for the supporting documentation and a written response from the County Manager and Lessor. There was supporting documentation provided on August 25, 2022 prior to this final report.

Controller's Office:




Walter Griffith JR, Controller

08/25/2022

Date

County Manager:

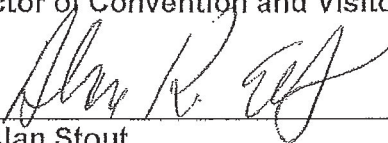


Randy Robertson, County Manager

14 Sept 22

Date

Director of Convention and Visitor Bureau:



Mr. Alan Stout

9/6/22

Date

Review of
Convention and Visitors Bureau Lease
Dated April 23, 2021

This report was distributed to the following:

Mr. Randy E Robertson	Luzerne County Manager
Kendra M. Radle	County Council Chairperson
Mr. Alan Stout	Convention and Visitors Bureau Director

This report is a matter of public record and is available online at <http://www.luzernecounty.org>, found under Audit Reports on the Luzerne County Controller's section of the website. A hardcopy is also available at the Luzerne County Controller's Office. Media questions about the report may be directed to the Luzerne County Controller's Office at 20 North Pennsylvania Blvd., Suite 213, Wilkes Barre, PA 18701 or via email to Controllers.Office@luzernecounty.org.