

MEMORANDUM

TO: David Corliss, City Manager

FROM: William N. Fleming

RE: Memorandum in Support of Request for Financial Assistance and Parking

DATE: December 13, 2010

The City is currently in the process of analyzing Ninth & New Hampshire, LLC's (the "**Developer**") request for financial incentives and certain parking privileges for the 901 New Hampshire project (the "**Project**"). This memo summarizes certain information that has been gathered in support of the Developer's requests.

1. **"But For" Argument.** City policy on tax incentives requires a "but for" showing before establishment of a tax increment district. The idea is that the developer requesting the establishment of a TIF district must demonstrate that "but for" the requested district, the project will not be built. There has been concern expressed over this issue because the project is already under construction before the request for incentives was made. The Developer believes the "but for" requirement has already been met through establishment of the Downtown 2000 TIF district. The Project should not have to meet this requirement again. This is not a situation where the Developer is requesting the establishment of a new TIF district. The TIF district already exists and the Developer is merely requested that the City pay for the infrastructure costs as originally contemplated by the TIF documents. The Developer cannot form a new TIF district.
2. **"But For" Argument Could Be Met.** We believe that if this was a situation where a new TIF district was being requested, that the "but for" requirement would be met. The current budget for construction of the Project is approximately \$11 million, which includes the infrastructure costs that are the subject of our request for assistance. The appraisal that was performed for bank financing purposes came back at \$10.65 million. The amount of assistance requested from the City is \$280,000. It is difficult for the Developer to justify construction costs that exceed the value of the building in the absence of City incentives that help narrow this difference.
3. **Amounts Already Budgeted.** There is an existing agreement dated September 18, 2000 that deals with construction of the downtown Parking Garage (the "**Parking Agreement**"). See attached. On page 6 there is a budget for the kinds of infrastructure costs that the Developer is now requesting reimbursement of from the City. The total budget was approximately \$830,000. Of this amount, approximately \$200,000 has been spent leaving \$629,657.91 in unspent funds. See attached TIF Ledger spreadsheet.
4. **Completion Date of Building.** The Parking Agreement provides that the original developer would complete building the planned buildings within five years (See page 8, Section VI.).

Market forces have delayed the construction of the buildings originally contemplated by the TIF District. The current Developer is not responsible for that delay. As shown on the attached memorandum dealing with the financial benefits derived by the City from the Project, there are still significant financial benefits that will be achieved by the City from the construction of this Project as it relates to the TIF District. It would not be fair for the City to not pay for the public infrastructure costs that the TIF district was originally supposed to pay.

5. **Policy on Downtown Development.** We believe the City's response to the Developer's request will establish whether the City is serious about supporting development in downtown Lawrence. Failure to support the request will cause the Developer to reevaluate whether to pursue other downtown projects. Failure by the City to approve this request may slow or delay the development of the parcel located across the street to the east north of the Arts Center. In effect, the existence of the TIF district will serve as a disincentive to development because no developer can request formation of a new TIF district until the existing TIF district expires, and no developer will proceed in the absence of these benefits (the hotel developer who was looking at the doing a project at this site has now backed out citing as one of his concerns the high cost of development and real estate taxes in Kansas).
6. **Original Purpose of Incentives.** The whole purpose of establishment of the TIF district is to encourage projects to be built in this area downtown. It is good policy to provide the financial incentives that were originally contemplated under the Downtown 2000 plan. The City staff and City Commission should support new projects being built in downtown Lawrence.
7. **Fast Payback.** The amount of financial incentives the Developer is requesting will be paid be in less than two years from date of completion. The Project will make a substantial contribution to helping the City pay for the parking garage. The Developer is willing to consider fronting all of the infrastructure costs with payment back to the Developer as tax revenues are realized by the City from the TIF District.
8. **Parking Request Relates to Original Purpose of the Garage.** The garage was built as part of a TIF district. One of the main purposes of the garage is to encourage and support exactly the kind of project we are building. The Project needs the parking to make it successful. Historically, the parking garage has been under-utilized. The Project will assist the City to achieve more effective utilization of the parking facility.

SUMMARY OF REQUEST

- The Developer is asking for approximately \$280,000 in assistance for public infrastructure for the Project.
- This work was included in the original TIF budget for public infrastructure costs.
- \$630,000 remains unspent from the original TIF budget for infrastructure costs.

- Because it is an already established TIF district, the City will receive the bulk of the state and school district share of the real estate taxes.
- Total real estate taxes received by the City will be approximately \$180,000 each year.
- Sales taxes on construction materials are estimated to be around \$80,000 and first year sales taxes are estimated to be \$70,000. That is \$330,000 in first year versus total requested amount of \$280,000. Payment to Developer can be made as tax revenues are realized by the City.
- The total amount to be received by the City over ten years is estimated to be around \$2.4 million. Fairness dictates that if the City will receive these additional benefits, the benefits should be shared as originally contemplated by the TIF.
- Everyone that supports downtown should be interested in seeing the Project succeed and the requested parking is important to helping the Project succeed.

MEMORANDUM

TO: David Corliss, City Manager, City of Lawrence

FROM: William N. Fleming

RE: Estimated Financial Impact to City from Ninth & New Hampshire Project

DATE: December 10, 2010

The purpose of this memo is to provide a rough estimate of the financial benefits that will be received by the City of Lawrence from the Ninth & New Hampshire project.

A. Real Estate Taxes. The project is part of an existing TIF district which means that we assume that the entire tax increment from the increased valuation less the share retained by the State of Kansas (equal to 21.5 mills) will be paid to the City of Lawrence and used to retire debt on the bonds issued to finance the construction of the parking facility. As we generally understand it, the TIF period runs for another approximately ten years. In an appraisal done by Ron Aul for project financing purposes, Mr. Aul estimated that the project would generate real estate taxes in the first year (after completion) in an amount equal to \$216,605. As noted above, under the TIF rules, the State of Kansas keeps 21.5 mills. The total mill levy this year is 123.591. Accordingly, approximately 82.6% of the real estate taxes collected will be retained by the City of Lawrence for payment of TIF bonds. This totals approximately \$178,916 each year. If we assume this as a fixed amount for the next nine years (assume 1 year construction period), this will generate a total of \$1,610,242 [$\$178,916 \times 9$] that can be used to assist in the payment of the parking facility and the requested expense amounts.

After the ten year period of time has elapsed, the City will continue to collect real estate taxes each year. Currently, the City's portion of the 123.591 total mill levy is 26.697, or 21.6% of the total real estate taxes paid. If we apply this percentage to the annual amount of real estate taxes set forth above, then the total annual real estate taxes paid following the expiration of the TIF period is approximately \$46,786 per year in today's dollars.

B. Sales Taxes. Current construction budget for the project is approximately \$10,285,339, not including the cost of the land. The general rule of thumb is that material costs are roughly 50% of the total costs of the project. In this case, that means total materials purchased in an amount of approximately \$5,142,670. This results in estimated sales taxes this year generated by the project in total of approximately \$79,711. Once operational, the first floor tenants (restaurant and fitness center) will generate additional sales that are subject to sales taxes. A rough estimate would be around \$800,000 in total sales, resulting in approximately \$70,000 in additional sales tax each year, based on current sales tax rate.

Once the TIF period has expired, the City of Lawrence's share of the 8.85% sales tax is 1.55%, or approximately 17.5% of the total sales tax each year. This will generate approximately \$12,260 in additional sales tax revenue for the City based on today's dollars.

C. **Parking Garage Fees.** Once the two year period of free parking has expired, the Project will begin to pay for parking fees for use of the spaces that it will use. At current rates, this will generate around \$10,000 per year in additional parking fees, not including customers of the Project who may pay daily rates to use the parking facility.

D. **Other Benefits.** Other direct and indirect benefits are more difficult to quantify. The project employs almost exclusively local contractors, architects, engineers, and vendors. This generates other business and economic activity in downtown Lawrence. The presence of the project downtown will enhance downtown vendors and merchants by increasing the numbers of people who will live, work, and shop in the downtown area.

E. **Summary of Anticipated Benefits.** The following summarizes the total benefits:

1. During Construction:

Sales tax:	\$79,711.00
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2. During first ten years:

TIF Real Estate Taxes	\$1,610,242
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Sales Taxes (9 x \$70,000)	\$630,000
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Parking Fees	\$ 80,000
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GRAND TOTAL – FIRST TEN YEARS	\$2,399,953
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ROUND TO	\$2,400,000
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NOTE: The project will pay back the requested amount of financial assistance in about eighteen months from completion.