

June 26, 2014

Mr. David L. Corliss
City Manager
City of Lawrence
6 East 6th Street
Lawrence, KS 66044

Re: **Request for Approval of Neighborhood Revitalization Area Property Tax Abatement and Industrial Revenue Bond Sales Tax Exemption for Redevelopment of 1101 & 1115 Indiana Street**

Dear Dave:

In reviewing our notes from the PIRC meeting that was held on 6-24-14 we made the following conclusions:

- 1) All eight (8) members of the PIRC committee were supportive of the HERE @ Kansas Project.
- 2) Based on the votes cast at the meeting six (6) out of the eight (8) members agreed with the City Staff's recommendation to use of IRBs for the sole purpose of a 100% sales tax abatement on initial construction materials and equipment used for the Project.
- 3) Based on their votes cast at the meeting six (6) out of the eight (8) members agreed with City Staff's recommendation to use the NRA property tax rebate economic tool. They differed on the duration ten (10) vs. twelve (12) years and the percentage of the rebate eighty-five (85%) vs. ninety-five (95%) partial property tax rebate.
- 4) Two (2) members agreed with City Staff's recommendation to use ten (10) years and eighty-five percent (85%) and four (4) members did not agree with City Staff's recommendation and recommended twelve (12) years and a ninety-five percent (95%) property tax rebate.
- 5) As a result, no PIRC majority consensus was produced by these votes.
- 6) The stated rationale of the two (2) members referenced in #4 above who did not recommend the twelve (12) year duration and ninety-five (95%) property tax rebate was that it did not yield a benefit-cost ratio of at least 1.25 as required in the written policy of the City stated in Resolution 6954 governing NRAs. A more rigorous review of the City's Economic Development Goals, Process, and Procedures and Resolution 6964 governing NRA Policy lead us to conclude that the analysis parameters placed upon the benefit-cost model utilized by City Staff for our Project were

inconsistent with the stated policies of the City governing the required Benefit-Cost Analysis for the NRA property tax rebate economic tool (as opposed to the tax abatement tool).

The City of Lawrence's Economic Development Goals Process and Procedures updated on May 18th, 2010 are referred to as the "*Overarching Economic Development Policy*" of the City on the City's website. We made some observations after reading them more closely:

1) The "Overarching" Policy predates the City's adaption of the NRA property tax rebate tool which was adopted on November 25, 2011 and as such did not directly contemplate the use of rebates when it was written but provides for their inclusion in section 1-2104 with the language "*but are not necessarily limited to.*"

2) In section 1-2106 concerning the benefit/cost model it specifically states that "*sales and income tax revenue which may result*" be included. It does not exclude in any way some aspects of the sales tax revenues generated by the subject project (i.e. sales tax dollars generated by commercial retail uses). It was pointed out at the PIRC meeting that the City Staff's benefit-cost analysis did not include this significant economic benefit for both the City and the County.

3) Section 1-2121 Requirements for Consideration of Tax Abatement #5 specifically states: "*the proposed project and tax abatement results in a combined positive cost: benefit ratio of 1:1.25 or greater over a 15 year period as determined by the City adopted benefit-cost model.*" The wording is very specific to tax abatements. NRAs do not utilize tax abatements. They utilize tax rebates as outlined in K.S.A. 12-17-117. The prescribed use of the City adopted benefit-cost model and the 15 year period is not required by the City's "*Overarching*" Policy". It appears more to be a historic custom and or a misread of the Policy.

In addition, we reviewed **Resolution 6954** the City's Policy Relating To Neighborhood Revitalization Areas. We also made some observations:

1) Section Two: Policy Statement states "*In determining the amount of the rebate, the Governing Body may balance the desirability of the project versus the amount and duration of the rebate and the requirements set forth in Section Four*". *It is the policy of the City to only consider the establishment of the Neighborhood Revitalization areas which yield a benefit/cost ratio of 1.25*". The subsequent analysis presented by City staff did indeed show a benefit-cost ratio well in excess of the prescribed 1:25 ratio for all taxing jurisdictions utilizing the duration of twenty (20) years (see attachment). Keep in mind, this result did not include all of the sales tax revenue generated from the Project. Remember "Overarching Economic Development Policy" of the City Section 1-2106 specifically states that a benefit-cost analysis "*will consider various factors including, but not limited to the following: the sales and income tax revenue which may result.*" This equates to **\$733,359** for the City and **\$473,800** for Douglas County in unaccounted for sales tax revenue resulting from the Project in the benefit-cost analysis. (13,137 sq. ft. x \$300 p.s.f. w/ 1% annual growth for the period of 2016 – 2036 discounted at 6.24%. 2016 is calculated as a partial year.)

2) There was some discussion during the PIRC meeting concerning the appropriateness of utilizing the NRA economic tool for this Project. **Section Three: Criteria 2A** was already affirmed by the City Staff recommendation. However, Section 2B which was not contained in the City Staff report seems to eliminate all doubt as to its appropriateness: **B. Other Criteria:**

a. *“the opportunity to promote redevelopment activities for properties which have been vacant or significantly underutilized”*. The current condition of the subject property indicates that this gateway location into the KU campus as well as being a neighboring property to the Oread Hotel is significantly underutilized. In addition, our infill redevelopment will increase the property taxes generated by the existing two properties utilizing the City’s own property tax analysis by 800%. We believe this qualifies as extreme underutilization.

b. *“the opportunity to attract unique retail/or or mixed use development which will enhance the economic climate of the City and diversify the economic base”*. This provision removes all doubt that sales tax should be incorporated into any benefit-cost analysis involving NRAs. You could not adequately analyze a project’s benefit-cost without including the sales tax revenue derived from its *“unique retail.”* City staff’s benefit-cost analysis was incomplete do to the limitations of the model being utilized. We believe that creating the first MU district in the City would qualify for diversifying the economic base of the City. We also believe HERE @ Kansas to be a very unique mixed-use project.

c. *“the opportunity to enhance the vitality of a neighborhood within the City as supported by the City’s Comprehensive Plan and/or other sector planning documents”*. The Oread Neighborhood Plan specifically identifies this site for a Mixed Use District and an Overlay District 2 (High Density). From the Plan: *“District 2 is generally the area directly adjacent to KU on the west side of the planning area. A. Minimum Parking requirements for uses B. Massing, scale, bulk, and articulation for new development C. Maximum lot coverage D. Height and density maximum increase E. Larger structures located on corners of certain streets, F. Lot size (assembly) G. N/A H. Setbacks.”*

d. *“the opportunity to enhance the community’s sustainability by supporting projects which embrace energy efficiency, multi-modal transportation options, or other elements of sustainable design”*. HERE Kansas has committed to being LEED Certifiable and Energy Star compliant. Our Project has nine (9) bus routes running directly by it. The Project at its own expense is rebuilding the bus stop on the corner of 11th & Indiana Street to a vastly improved standard supported by both City and KU Transit. Our Project’s residences will be able to walk to both the KU Main Campus and to downtown reducing both pollution and vehicular congestion. Our automated robotic parking solution will bring a new height of technological sustainability to both Lawrence and the state of Kansas.

A collective reading of all the stated NRA criteria makes HERE @ Kansas an exemplary project for NRA utilization.

3) **Section Four: Amount of Rebate** states: *“The City may consider a greater rebate and/or a longer duration if sufficiently justified in the “but for” analysis required by Section Five. The determination of the rebate amount and duration of the NRA is the sole discretion of the Governing Body”*. The City Staff Report’s but/for analysis of the Project has already justified the amount and rebate duration period of: 12 years 95% in conjunction with the use of IRB’s for the sole purpose of a sales tax exemption. The analysis period of the required cost/benefit analysis by inference would logically need to be compatible with the justifiable duration of the rebate. The NRA policy is silent to the benefit cost analysis duration period to allow for the necessitated flexibility required by the wording of the NRA policy itself. In other words, a strict blind adherence to a fifteen (15) year analysis period would be incompatible with the stated flexibility contained in the NRA Policy itself.

4) **Section Five: Process** states *“Staff will perform a benefit/cost analysis on the project”*. No where contained in the policy is what specific benefit-cost model should be used. One would assume that a model appropriate to the project in question should be used. The City adopted benefit-cost model is not specifically mentioned as is the case for the consideration of tax abatements. Its inability to capture retail sales tax benefits makes it ill-suited for NRA application.

It is our opinion that our Project complies with the spirit and intent of the NRA property tax rebate economic tool as outlined in the City’s Policies. We remain hopeful that the governing body will see fit to approve our rezoning, PDP, and requested economic incentive package on the scheduled July 8th City Commission Meeting.

Respectfully,

James W. Heffernan
Its: Manager

Cc: Diane Stoddard
Britt Crum-Cano