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May 7, 2010

VIA E-MAIL ONLY

Mr. David Corliss
City Manager – City of Lawrence
PO Box 708
Lawrence, KS 66044-2268

Re: *Proposed Draft of Community Improvement District (“CID”) Policy*

Dear Dave:

I am writing to express my support of the City’s efforts to be proactive in adopting an official policy for the use of CID financing. The Community Improvement District Act, codified as K.S.A. 12-6a26, creates opportunity for new development in Kansas, and may be particularly beneficial in the City of Lawrence. In the present economy, existing and prospective businesses are struggling to obtain the financing necessary to expand, remodel, or relocate in Lawrence. The use of a CID may create the collateral asset needed for those businesses to obtain project financing. CID projects will increase the commercial tax base and local sales tax revenue. To maximize this potential opportunity, the City should be cautious about the limitations and conditions imposed in the policy. Until the first CID petitions are filed, all of us are acting on hypothetical facts that may be very different from the real projects that appear for consideration.

I agree with the sentiment that CID financing, in the form of pay-as-you-go financing or special obligation bonds, poses no financial risk to the City at-large. The developer bears all of the financial risk, which takes several forms. For example, because the developer must first spend money before being reimbursed, there is risk that the project will fail, or produce lower than expected sales tax revenue. However, the community has expressed differing opinions about CID financing. Contrary to some of those opinions, a CID does not constitute a secret “private” tax that businesses can use to pass along its costs to the public. **First**, the formation of a CID, especially those imposing a sales tax, will be a public process. **Second**, many would be surprised to learn that the developer is frequently **not** the entity that collects the sales tax. In many situations, the end-user will purchase a lot or building from the developer and agree to collect the CID sales tax, which is ultimately paid by the State, through the City, to the developer. The CID is primarily a tool to help obtain financing, and to make property more marketable to retailers, not as a means to clandestinely increase profit. This symbiotic relationship between developers and retailers is already successfully occurring in Lawrence with Transportation Development Districts, such as in Bauer Farm. **Third**, the dollar is your vote. Anyone dismayed by the use of CID financing can elect not to frequent those businesses—although they may find that the cost of boycotting the business will cost more than the tax itself.

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Suggested Policy Revisions

Please consider the following minor revisions to the City's proposed CID policy, which are consistent with the policy's stated objective to "promote economic development and tourism within the City":

1. Section Two, paragraph 1: The term "redevelop sites within the City," which is synonymous with the term "infill development," and takes many forms. In the commercial context, a potential user may not desire to demolish an existing building. Nevertheless, the rehabilitation or remodeling of an existing building can be cost prohibitive absent CID financing. Consequently, I propose that this condition be modified to read as follows: "Promote and support efforts to redevelop, rehabilitate, or substantially remodel sites within the City, or to provide for reinvestment in our community."
2. Section Two, paragraph 2: The word "unique" implies a one-of-a-kind opportunity, which—by definition—occurs infrequently. Not every project will be as grandiose as The Oread, but the addition of a well known chain retailer or restaurant would be viewed by many Lawrencians as a much needed addition to the community. Please add the words "or quality" after the word "unique" in the first sentence.
3. Section Two, new paragraph 6: To enable the City Commission to consider other material factors not expressly listed in the policy, the following additional factor should be added to the policy: "Any other criteria or factor the Governing Body deems relevant to its decision."
4. Section Six, paragraph 1: Although I understand the utility in making an application fee high enough to discourage frivolous petitions, please consider reducing the fee from \$2,500 to \$1,000, or providing that \$1,500 of the fee shall be refunded if the petition is denied. As written, the fee amount may discourage quality applicants from applying for CID financing, due to the possibility of ultimate denial. By analogy, banks charge origination fees or points for issuing a loan, but such fees are not paid unless and until the loan closes. Moreover, the City has the ability to cover its costs using funding agreements. Hays, Kansas has a \$250.00 fee and incorporates a larger fee to cover the city's actual costs, in lieu of a funding agreement. I support a modest but manageable application fee, which in any event should be expressly reimbursable by the CID.
5. Section Seven: The Governing Body should have the ability to deviate from the policy unless dictated by statute. As written, the policy could be construed to prohibit *any* deviation from the terms of the resolution. Please consider revising the first sentence to read as follows: "The Governing Body reserves the right to deviate from any policy set forth in this Resolution, other than procedural requirements of state law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that are in the best interest of the City."

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Conclusion

When a developer and a retailer consider the formation of a Community Improvement District, they must make a business decision regarding the effect the CID sales tax will have on business. Once made, however, the decision to seek CID financing poses no financial risk to the City, and could be a key component to this community's economic recovery. Each CID petition should be considered on its own merits, without narrowly construed conditions. In that sense, several minor modifications to the City's CID policy will enable future City Commissions to freely consider what I hope will be numerous CID petitions over the next decade.

Respectfully,

A handwritten signature in black ink that reads "Matthew S. Gough". The signature is written in a cursive, flowing style.

Matthew S. Gough
of Barber Emerson, L.C.

MSG:jsm