

April 8, 2014

Mr. David Corliss
6 East 6th Street
PO Box 708
Lawrence, Kansas 66044

RE: Request to Remove Section 5.03 from North Project Redevelopment Agreement.

Dear David:

I am writing to request the removal of language that has been added to the North Project Redevelopment Agreement that pertains to operation of the premises. The specific language we object to reads in pertinent part in bold as follows:

B. Developer and their employees, agents, officers, directors, and managers shall ensure that all persons or entity(ies) who carry on, conduct or operate a business in or upon the North Project Area shall comply with and cause to be enforced, all federal, state and local rules, regulations and laws that apply to the such business operations. Without limitation, the following shall be considered violations of the terms and conditions of this Agreement:

- 1. Allowing underage persons to consume beer, wine, spirits or alcoholic beverages in, upon or around the North Project Area;**
- 2. Failing to remove or have removed from the buildings and premises any person who has committed a violation of K.S.A. 2013 Supp. 21-6203, (disorderly conduct) and amendments thereto;**
- 3. Maintaining a public nuisance or permitting a public nuisance as set forth and defined in K.S.A. 2013 Supp. 21-6204, and amendments thereto, in, on and about the North Project Area;**
- 4. Failing to remove or have removed and to immediately report to the proper authorities any person possessing illegal drugs or controlled substances in, on or about the North Project Area;**
- 5. Failing to remove or have removed and to immediately report to the proper authorities any person who has committed aggravated assault or battery or other violent crimes against persons in, on, or about the North Project Area;**

6. Permitting any other conduct or operation which does or may adversely affect the health, safety and welfare of the City's central business district, the adjacent residential neighborhood, or the residents, guests, or invitees thereof.

A violation of any of the conditions herein stated shall be sufficient for the Governing Body of the City to revoke, modify or suspend this Agreement, and withhold any reimbursements from the Tax Increment Fund and/or TDD Sales Tax Fund.

Although we do not anticipate that we will have any restaurant or bar uses in the North Project, there is always the possibility that we will have a tenant someday that serves alcohol on the premises. Accordingly, we object to the inclusion of this language based on the following reasons:

1. This is a "pay-as-you-go" district. These means the Developer has to front all of the costs of the improvements and will borrow funds to do so. This language creates a risk that the Developer will lose the TIF reimbursement funds needed to repay the loans for violations that may or may not be within the control of the developer. This will chill lender enthusiasm for making loans that are partially guaranteed by these repayment sources.
2. The language does not make any distinction between a business that is run by the Developer versus a business that is operated by a tenant that is leasing space in the building. How is the Developer supposed to police or control the type of behavior that is being regulated?
3. The remedy, loss of the reimbursement, is totally disproportionate to the "crime." You would not fine a bar or restaurant millions of dollars for one liquor violation, but the impact here would be to do that.
4. There are other enforcement mechanisms available to the City to deal with violations of liquor laws and rowdy behavior. There is no reason to add a layer of bureaucracy to the administration of TIF and TDD districts. All of these violations should be treated in the same manner. Businesses located in a TIF or TDD district should not suffer multiple penalties that are not imposed on other violators.
5. The language is vague and difficult to determine whether some action would "adversely affect the health, safety, and welfare" of the City's central business district.
6. Is there any standard of materiality? Does one beer consumed illegally on the premises give rise to the City's right to terminate the TIF agreement?

7. The TIF and TDD statues are creatures of Kansas state law. Why craft additional local requirements on top of the state requirements if not necessary and no real purpose will be served.

The City through its police power has the ability to regulate the behavior that is being regulated in this section. The City can terminate or suspend a business liquor license, and take other additional criminal and civil actions to deal with obnoxious behavior that may occur or is occurring. There is absolutely no reason to single out businesses operated in the TIF, TDD, or other special district for treatment that is more severe than the treatment meted out to other similar businesses elsewhere.

Any attempt to so should be viewed as hostile to creation and use of these districts to bring new buildings and the associated public improvements to downtown Lawrence. We fail to understand why a mechanism that is used to finance public improvements such as parking for the benefit of everyone is somehow become the sword that will be used to regulated human behavior that has nothing to do with the existence or non-existence of the public improvement, and that will discourage the public good that is being created by the special district.

Very Truly Yours,

Bill

William N. Fleming, Esq.
General Counsel