

From: Mark Meadows

To: all concerned

Re: refinancing of the non-recourse bonds for construction of the Center City Project

I now have had an opportunity to review the staff report and supporting documentation which will serve as the basis for the refinancing request to be discussed at the July 9 BRA meeting. There are a few matters that I want to be sure the BRA members are aware of at the time a decision is made regarding the refinancing request.

1. The Brownfield TIF plan for the Center City Project was approved on June 20, 2017 by the City Council.

2. The Resolution which was approved by the Council contained language requested by now Mayor Beier, which limited TIF to those “expenses detailed in an approved Master Development Agreement Exhibit N ‘City Approved Eligible Activities’” The Resolution was approved by unanimous vote.

3. The Development Agreement limits approved activities to “the cost of the eligible activities which are set forth in Column 2, Scenario A of Exhibit N. The net proceeds from the BRA bonds shall not exceed \$24,389,518.” Exhibit N further identifies the eligible activities as “no Grand River eligible activities”, identifies “Albert Avenue Building” eligible expenses, and expenses relating to the sidewalks and alley adjacent to the Grand River site.

4. The approved Brownfield TIF plan specifically provides: “NOW THEREFORE BE IT RESOLVED, that the Council for the City of East Lansing accepts the recommendation of the Authority and approves the adoption of the Brownfield Plan #24 with the following condition. Only the expenses that are detailed in an Approved Master Development Agreement Exhibit N ‘City Approved Eligible Activities’ shall be financed with Brownfield Revenue Bonds payable solely from the pledged tax increments revenue from the Eligible Property and payment of

those bonds will be the only eligible expenses to be reimbursed for Brownfield Plan #24.”

5. Exhibit N Column 2, Scenario A provides that the “Total TIF eligible expense” is \$24,389,518 and the “TIF eligible Expense and Interest” is \$50,217,825.

6. The original bond was in the amount of \$25,265,000 and the proceeds were divided into two funds: the BRA Project Fund and the Cost of Issuance Fund. Exhibit A to the Bond Counsel letter detailed the components of the Cost of Issuance Fund: Origination Fee, Bond Counsel, Developers Counsel, Developers Financial Advisor, Trustee Acceptance, Trustee-First Year Construction and Security Report Filing Fee.

7. Per the Development Agreement and the adopted Brownfield TIF plan, no tax increment is available to pay any of the expenses detailed in the Bond Issuance Fund. The TIF plan is limited to paying for the BRA Project Fund plus interest.

8. The Development Agreement does contain the following language: “Notwithstanding any provision to the contrary in this agreement or in Brownfield Plan # 24, the maximum amount of tax increment revenue that may be captured is \$55,952,038.” Whether this actually changed the document that restricted the amount (the resolution adopting Brownfield Plan #24) or not is unlikely.

9. In addition, while the Development Agreement was also adopted at the meeting of June 20, 2017, it was later amended by a first addendum Section 2 of which then confirmed that the project was to be conducted in conformance with Exhibit N and the maximums contained in approved Brownfield Plan #24

So, what does all this mean in terms of the documents you all have been provided?

1. The proposal here (per bond counsel letter) is to issue a bond in the amount of \$25,265,000 plus accrued interest of \$335,000, plus the cost of issuance for the refunding. Other than the cost of issuance, this is in conformance with the Trust indenture executed by the BRA.
2. The next to last paragraph of the staff report makes reference to the “approved Brownfield Plan”. The paragraph concludes that the approved plan provided for “...a total approved tax increment revenue capture of \$55,987,038.”
3. The figure identified in the staff report is the figure contained in Brownfield Plan #24 but is not the approved amount. That amount is \$50,217,825.

The Brownfield TIF Plan, the Master Development Agreement, the Ground Lease and the Parking Agreement were all approved by the City Council. All other documents related to the Center City Project were executed and approved by the BRA and/or the DDA. While the City approved documents may incorporate by reference some terms and conditions of the other documents, none of those documents can amend or replace the provisions of any of the other documents. Each stands alone. Even the language quoted above which purports to amend just passed limitations on the use of TIF has questionable validity since the Development Agreement was passed with the stated understanding that it would be conformed to the Brownfield Plan and the site plan passed earlier in the evening.

I am bringing all of this to your attention because many of you were not involved in the Center City approvals and have been appointed to the BRA after the Center City matters were effectively concluded in the fall of 2017. You can bond for whatever amount you choose to, but TIF is available to pay for \$50,217,825 and only that amount. This may not be a problem since the Development Agreement provides that the Developer is responsible for any shortfall but I wanted you to be aware of it.