



BOONE COUNTY AUDITOR

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Honorable Members of the TIF Commission:

As one of the County's two appointees to the TIF Commission, I appreciate the opportunity to provide written comments to you.

As you know, over the past several months the TIF Commission has considered Mr. Parmley's application for TIF financing pertaining to his proposed Broadway Hotel Phase Two Redevelopment Plan. During this period of study and analysis, I have come to understand the statutory requirements pertaining to TIFs much more clearly than I did at the outset of this process. The primary purpose of this letter is to share what I have learned in hopes that we can orient our efforts in accordance with statutory standards. With this goal in mind and in the spirit of integrity, I offer the following comments.

The TIF Act allows for redevelopment projects to be considered under one of three categories: (1) Blight; (2) Conservation; or (3) Economic Development. The TIF Act sets forth the legal requirements specific to each of these three separate categories. The applicant (Mr. Parmley) has applied for TIF financing under the provisions of the *Conservation* category; therefore, we TIF Commission members are duty-bound to understand and apply the statutory provisions specifically applicable to a Conservation area TIF.

First, the TIF Commission must find that the redevelopment area (i.e., the single parcel located at 1104 East Walnut Street) is, in its *current condition*, **"an area that is not yet a blighted area but is detrimental to the public health, safety, morals, or welfare and may become a blighted area"** (RSMo 99.805(3)). In other words, we the TIF Commission, must find that there is a serious problem with the property in its current condition and that the problem presents a clear and present threat to public health and safety. This is a significant finding that must be based on compelling evidence.

Several people have suggested to me that this particular statutory provision is "too vague" to be meaningfully applied and because of this, the TIF Commission should simply "check the box" so to speak, and move on. I find this attitude very concerning. It seems to me that the framers of the TIF Act had in mind that the TIF Commission would honestly and seriously evaluate evidence and reach a reasoned conclusion as to whether the redevelopment area actually suffers from a problem of "near-blight". I understand that it may be very tempting to "check the box" and move on because the proposed project seems highly desirable to downtown Columbia. I understand this temptation; however, I believe that a higher standard

is required by the TIF Act and we are duty-bound to uphold that higher standard, regardless of our personal preferences.

Others have asserted that the current structure on the site does not represent the highest and best use for the subject parcel. That may very well be true... it is most likely true. In fact, I am quite confident that the current structure does *not* reflect the highest and best use, but this is irrelevant to a determination of Conservation under the TIF Act. The TIF Commission has **NO** responsibility or authority to determine the highest and best use of *any* property. Rather, the TIF Commission is charged with reaching a conclusion as to whether the *current conditions* on the property are detrimental to the public health and safety which therefore lead to a conclusion that the property qualifies for designation as a Conservation area.

May I suggest that as a baseline starting point we apply the age-old “reasonable man or reasonable woman test”. It goes like this: Would a reasonable man or a reasonable woman walking down the street conclude that the property located at 1104 East Walnut Street is “detrimental to public health, safety, morals, or welfare and at risk for becoming a blighted area”? I’m not sure that they would. If not, the TIF Commission needs compelling evidence to justify such a finding. The applicant bears the burden of producing such evidence and, to date, I don’t believe such evidence has been provided.

But let’s assume for a moment that the TIF Commission does, in fact, reach a finding that the property in question meets the Conservation test. If so, then a **second test** must also be met. The TIF Commission is duty-bound to determine whether the redevelopment area would “reasonably be anticipated to be developed without the adoption of tax increment financing” (RSMo 99.810(1)). This is the “But for” test. **In layperson’s terms, the TIF Commission must find that there is a serious problem of near-blight on this property and the only hope that any development will ever take place to cure the problem is to offer a public subsidy in the form of TIF financing.** The applicant has submitted a signed affidavit along with a letter from a bank stating that his *specific project* is only feasible if he receives TIF financing. That may very well be true, but it is not relevant to the statutory “But for” test. The “But for” test requires that the TIF Commission reach a finding that **NO** development whatsoever would reasonably be expected to occur on this parcel unless TIF financing is approved, ostensibly due to the near-blight conditions in existence on the property.

Just a few blocks to the west of the parcel in question and right outside my office building (The Boone County Government Center), a multi-story office building is currently under construction. This project is proceeding without TIF financing on a smaller lot than the subject lot, and at a significant investment to the Developer of several million dollars. In fact, the downtown skyline has been dotted with construction cranes and streets and sidewalks have been impacted for many, many months with construction, all of which suggests a very active and vibrant development environment. In addition, the County Assessor has provided historical information pertaining to the growth in the downtown area since 2008 which shows the growth of assessed valuation in the downtown area is proceeding at nearly double the pace of the rest of the County. It is noteworthy that all this growth and construction has, and is, occurring *without* TIF financing. In light of these facts, compelling evidence is needed to persuade the TIF Commission that no development whatsoever is likely on the subject

property without TIF financing. The applicant bears the burden of producing such evidence and, to date, I don't believe such evidence has been provided.

Assuming that the two statutory findings are met (i.e., Conservation Area and "But for" tests), the TIF Commission would then move on to evaluating the Redevelopment Plan and the Cost Benefit Analysis. On this point, I would simply observe that a Cost Benefit Analysis prepared by the Applicant would not be expected to be independent, objective, or comprehensively complete. This is not a criticism of the Applicant's Cost Benefit Analysis—just acknowledgement that *any* applicant would have inherent bias when preparing such an analysis. If the TIF Commission were to find that the two pre-requisite tests of Conservation and "But for" are met, I believe that additional due diligence pertaining to the Cost Benefit Analysis would be required for the TIF Commission to render a recommendation. But my larger point is that we don't even get to this issue until, and unless, the Conservation and "But for" tests are both met.

The TIF Act imposes a significant burden of proof and the TIF Commission is expected to uphold this standard. To do so, we must conduct our efforts with a presumption that the tests are *not* met and reach conclusions and findings only after receiving compelling evidence. As I reflect on the manner in which this TIF application and the Redevelopment Plan have been presented to the TIF Commission, it seems to me that we leap-frogged over the two fundamentally required statutory tests (Conservation and "But for") and moved very quickly to a focus on the Applicant's Redevelopment Plan and the Cost Benefit Analysis. I recommend that City staff and the TIF Commission adjust this approach for any future TIF applications.

In conclusion, as we move forward tonight with the continued public hearing, further deliberations, and an eventual vote at some point on the matters at hand, I encourage all of us to orient our thinking and our analysis around the established statutory framework that we are duty-bound to uphold.

Thank you for your service to our community.

Sincerely,

June

June E. Pitchford
Boone County Auditor