

July 27, 2011

Dear _____ :

During the last-minute negotiations between the DDA and the City of Ann Arbor concerning the DDA Parking Agreement and the City budget in late May 2011, City officials brought attention to provisions of Chapter 7 of the City Code, which defines the DDA's tax increment financing (TIF) and the City's distribution of those tax funds. City finance staff presented the issue as an ordinance provision they had neglected to implement in the distribution of TIF funds over the last several decades. It now seems that not only had the provisions of Chapter 7 been overlooked, they were not relevant to DDA TIF monies.

In the haste of the City budget deadline, the DDA staff and board members initially interpreted Chapter 7 (Section 1:156 (2)) as requiring a return to the taxing units of a percentage of TIF monies collected in excess of that which the Council-approved TIF Plan predicted. A more careful look at the ordinance, state statutes, and the legislative history of the establishment of the DDA shows that the DDA should only relinquish TIF monies to the taxing units if the DDA fails to spend its TIF consistent with its development plan.

Much of the confusion over the interpretation of Chapter 7 stems from the 2003 DDA Renewal Plan. Although the text of that plan predicts a 2-3% annual growth rate of assessed property values, the chart attached to the Plan as an illustration sketches out predictions of total property values according to pessimistic, realistic, and optimistic scenarios. Some individuals have used this illustration to determine what amounts the DDA might "owe" back to the taxing units. In reality, the DDA's 10-year budget plan has assumed a 2% annual rate of growth and that has proven to be an accurate average. Using the illustrative chart to calculate a "cap" on TIF collection by the DDA could lead to the absurd result, as some have suggested, that the DDA has reached its limit on TIF collection and cannot collect any TIF in the future, regardless of whether debts are still owed on bonds or whether there are still improvements to be made downtown.

Regardless of how one might interpret the chart, the last paragraph of Section 1:156 (2)(E) is key: "Tax funds that are paid to the Downtown Development Authority due to the captured assessed value shall first be used to pay the required amounts into the bond and interest redemption funds and the required reserves thereto. Thereafter, the funds shall be distributed as

set forth above or shall be divided among the taxing units in relation to their proportion of the current tax levies.” (emphasis added) This is consistent with state statutory requirements, which state, for example, that no TIF plan can be terminated until all bond debts to which TIF funds are committed are paid.

There can be no doubt that as long as the DDA is spending its TIF monies according to its plan, no funds should be returned to the taxing units. All of the DDA TIF is now committed to debt service for the existing downtown development projects and the administration of those projects. Going forward, the DDA will not make distributions to the taxing units so long as it is obligated to make bond and interest payments on downtown development projects.

Sincerely,

Susan Pollay, Executive Director
Ann Arbor Downtown Development Authority