

August 11, 2011

Susan Pollay
ANN ARBOR DOWNTOWN DEVELOPMENT AUTHORITY
150 S. Fifth Avenue, Ste. 301
Ann Arbor, MI 48104

Dear Susan:

I am writing in response to your letter of July 27, 2011. I am quite disturbed by the DDA's sudden reversal of its position regarding the overpayment of tax increment financing ("TIF") revenues based on Chapter 7 of the Ann Arbor City Ordinance. So that you can better understand my reaction, I think it would be useful to review the events leading up to my receipt of your letter.

Your letter states that City officials first raised the issue of TIF overpayment in late May 2011 during negotiations between the DDA and the City regarding the parking agreement. Actually, the issue was first raised by the City at a DDA meeting on May 2, 2011 which I attended. The meeting minutes reflect that there was some uncertainty as to how the provisions of Chapter 7 would be applied to the TIF capture. It was agreed that the City Attorney and counsel for DDA would do further legal research and would advise as to the financial impact of the ordinance upon DDA and the taxing authorities.

After the staff and attorneys for the City and DDA had spent nearly three weeks doing legal research and calculating the amounts owing to the taxing authorities, a special DDA meeting was held on May 20, 2011, which I also attended. The meeting began with a Power Point presentation by DDA in which it was clearly stated that the Chapter 7 ordinance caps the amount of TIF that can be captured by DDA and that as a result the taxing authorities are entitled to a refund. In fact, the DDA passed a Resolution entitled "Resolution for City Ordinance, Chapter 7 TIF Repayment" which is reflected in the minutes as follows:

Whereas, it was brought to the DDA's attention on May 2, 2011 that an overpayment of TIF had been made to the DDA since 2004 based on City Code Chapter 7 limitations;

Whereas, the DDA has met with City staff and the DDA's attorney to calculate the amount of this overpayment;

Whereas, the amount owed to each taxing entity for fiscal years 2003 to 2011 has been determined to be:

City of Ann Arbor	\$711,767
Washtenaw County	\$242,179
Washtenaw Community College	\$156,520
Ann Arbor District Library	\$ 74,666

The Resolution passed unanimously. One board member even noted that the Resolution was only to approve the amount of the refund since the DDA had a statutory obligation to refund these monies to the taxing authorities. Contrary to the suggestion in your letter, DDA did not pass this Resolution hastily or as a result of "last minute negotiations." The Resolution was passed after nearly three weeks of careful analysis and advice of counsel and was subsequently approved by City Council. At no point during this process was it ever suggested by a DDA board member or City official that Chapter 7 of the City Ordinance does not even apply to the DDA TIF capture as stated in your letter.

Following DDA's unanimous approval of the Resolution and adoption by City Council, the Library received a check from DDA Deputy Director Joseph Morehouse in the amount of \$74,666. In the cover letter sent with the check, Mr. Morehouse stated:

On May 2, 2011 the Ann Arbor Downtown Development Authority was informed by the City of Ann Arbor that due to an overlooked paragraph in City Ordinance, Chapter 7 paragraph 1:156(2), the City had remitted incorrect tax increment financing amounts to the DDA in fiscal years 2004, 2005, 2007, 2008, 2009, 2010 and 2011.

After a consultation with the City, the DDA assembled the attached spreadsheet showing how the TIF capture should have been calculated. On May 20, 2011, the DDA board passed a Resolution to remit TIF coverage amounts for years 2004 through 2011 back to the Ann Arbor District Library, Washtenaw County, and Washtenaw Community College, with the City of Ann Arbor agreeing to forgive any TIF overage due to past DDA grants....

We have been assured by the City that they will work within the City's ordinance in the future as they capture TIF on behalf of the DDA and that no further corrections will be necessary.

The Library believes that it is owed significantly more than \$74,666. A method of calculation which is more consistent with the applicable ordinance and the TIF plan adopted by the City would yield a refund to the Library of about \$200,000. However, before addressing the flaws in DDA's method of calculation, I would like to respond to your claim that the restrictions in Chapter 7 of the ordinance do not apply to the DDA TIF capture.

Chapter 7 of the Ann Arbor City Ordinance places a cap on the amount of tax that can be captured by the DDA. The cap amount is based on the estimate of captured assessed value and

TIF revenues which is set forth in the 2003 DDA Development Plan and Tax Increment Financing Plan. If the actual TIF capture in any given year is greater than anticipated in the 2003 plan, then at least 50 percent of such amounts are shared with the taxing authorities in relation to their proportion of the tax levies. If the actual TIF capture grows at a rate of over twice that anticipated in the 2003 plan, then all such amounts over twice the anticipated growth rate is shared with the taxing authorities. The ordinance would never eliminate DDA's ability to collect TIF monies as you suggest in your letter. The ordinance simply places a defined limit on the amount DDA can capture in any given year. The cap on TIF capture required by the ordinance is consistent with the State statute which allows taxing authorities to share in the TIF capture.

When the ordinance is read as a whole, it seems difficult to come to any conclusion other than it creates a cap on the amount of TIF that can be captured by DDA and this has been corroborated by the City and the DDA which reached the same conclusion after weeks of research and analysis. Your reliance on the last two sentences of Section 2 of the ordinance, taken entirely out of context, is simply not persuasive. These sentences address how the TIF funds paid by the City to the DDA are to be applied. The amount the DDA receives from the City is restricted by the cap provisions of Section 2 described above. From this amount, the DDA must first deposit an adequate amount to satisfy any bond obligations and then distribute the funds in accordance with its development plan. Any amount collected by the City in excess of the cap amount is then divided among the taxing units in relation to their proportion of the current tax levies. Your statement that "DDA will not make any distributions to the taxing units so long as it is obligated to make bond and interest payments on downtown development projects" makes the cap provision of the ordinance completely meaningless. The ordinance does not make any connection between DDA bond obligations and restrictions on TIF capture. Your statement also ignores the fact that it is the City, not the DDA, which is ultimately responsible for all bond obligations. There is simply no discernable basis for DDA's sudden reversal of its position and it is also in conflict with the City's interpretation of its own ordinance which has been adopted by City Council.

I would now like to address the DDA's method of calculating the amount of excess TIF capture owed to the Library for fiscal years 2003 to 2011. The TIF plan contains an estimate of captured assessed value in TIF revenues from 2003 to 2033, which is used as a basis for establishing the cap on TIF capture for any given year. Appendix C to the TIF plan contains a table which includes three scenarios for the projected valuations. The "pessimistic" valuation assumes a growth rate of about 2.3 percent; the "realistic" valuation assumes a growth rate of about 2.9 percent; the "optimistic" valuation assumes a growth rate of about 3.5 percent. In calculating the amount of refund due to the Library, DDA used the "optimistic" projections as the cap for TIF fund capture. The Library's refund is based on the amount of excess capture above the projected cap amount. By using the maximum projected cap amount for each year in its calculations, the DDA has chosen the scenario which yields the lowest possible refund to the Library. You state in your letter that "in reality, the DDA's ten year budget plan has assumed a 2 percent annual rate of growth and that has proven to be an accurate average." If this is true, then the DDA clearly should have used the 2 percent growth rate in its calculations which would have yielded a significantly larger refund to the Library.

The Library also disputes the DDA's method of calculating the actual growth of the amount of TIF capture. The City ordinance clearly states that the estimates of captured assessed

value in the 2003 DDA plan function as caps on the amount that can be captured by DDA in any given year. The ordinance also states that if the actual captured assessed value exceeds the cap in any given year, then the DDA is required to refund a portion of the excess TIF capture to the taxing authorities. For example, for 2008, the DDA's "realistic" projection for captured assessed value was \$80,619,488. The actual TIF capture for 2008 was \$92,204,889, an excess of \$11,585,401 over the cap amount. This is the amount that should be subject to the refund provision of the City ordinance for the year 2008.

However, the DDA utilizes a computation method which results in significantly lower amounts of excess TIF capture. The DDA's method compares the valuation for a given year to the previous year's valuation and calculates the difference as actual growth. Then DDA also calculates the difference between the estimates in the TIF plan for the same years and subtracts it from the actual growth number to determine the amount of excess TIF capture. Using this method, the DDA calculates that for 2008 there is excess TIF capture of \$7,498,052, over \$4 million less than the amount calculated using a straightforward comparison of the projected amount and the actual TIF capture for 2008.

In 2009 the difference in calculation methods yields an even greater difference. Using a straightforward comparison, in 2009 there was an excess TIF capture of \$30,481,575. The DDA calculated an excess amount of \$18,326,175, a difference of over \$12 million.

It is really unfortunate that the DDA has chosen a calculation method which allows it to retain the maximum amount of excess TIF capture. The DDA's method is also contrary to the ordinance requirement of establishing definitive caps on TIF capture from which any excess owed to taxing authorities can be calculated. The DDA's approach essentially eliminates a definite cap amount for any given year because it resets the baseline each year against which growth is measured. The clearest way to illustrate the elimination of the cap is to look at the TIF capture for fiscal years 2011 and 2012. For these years there was a decrease of \$2,812,249 which under the DDA approach means no actual growth and therefore no possibility of a refund to the taxing authorities for that year. Under the DDA approach, the projected cap amount of \$90,478,316 for fiscal year 2012 becomes irrelevant because there was no growth in TIF capture from FY 2011 to FY 2012. However, if you compare the cap amount for FY 2012 in the TIF plan with the actual TIF capture of \$137,800,186, there is excess TIF capture of over \$47 million. The Library will simply not allow the DDA to continue to ignore the cap amounts established by the City ordinance.

Using the calculation method described in the ordinance, the Library is due a refund for excess TIF capture which has accrued since 2003 of approximately \$200,000. The Library has cashed the DDA check in the amount of \$74,666 but with full reservation of all of its rights to the balance still due and owing.

The Library fully intends to enforce its rights for all past and future amounts owed to the Library as a result of excess TIF capture. However, the Library would prefer to resolve these issues without court involvement. Please contact me to discuss if the DDA is interested in a resolution of this matter.

Very truly yours,

Josie Parker
Executive Director, Ann Arbor District Library