



# LEE'S SUMMIT

LAW DEPARTMENT  
OFFICE OF THE CITY ATTORNEY

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April 16, 2019

**TO:** Mayor Baird and City Council  
**FROM:** David Bushek  
**RE:** Summary of 2<sup>nd</sup> and Douglas TIF Plan and LCRA Plan

**Actions by Recommending Bodies:**

**Tax Increment Financing Commission**

On March 25, 2019, the TIF Commission passed a motion in opposition to the TIF Plan by a vote of 6-3-1 (Rhoads abstaining). This triggers a heightened voting requirement at the City Council; the TIF Plan can only be approved by a two-thirds majority vote of the full City Council (six affirmative votes). This heightened voting requirement applies to the ordinance which would approve the TIF Plan and the TIF Project, but has no effect on other ordinances for the project.

**Land Clearance for Redevelopment Authority Board of Commissioners**

On February 27, 2019, the LCRA Board of Commissioners adopted a resolution recommending that the LCRA Plan should be adopted by the City Council. The normal voting requirements will be applicable to the LCRA Plan ordinance. The resolution approved by the LCRA Board also delegated to the City all power and authority that is needed to implement the LCRA Plan, meaning that the City rather than the LCRA can take all actions as granted to the LCRA by the Land Clearance for Redevelopment Authority Act, Section 99.400 to 99.715, RSMo, which are necessary to implement the LCRA Plan.

**Developer:** DTLS Apartments, LLC (the “Developer”), a subsidiary of Cityscape Residential based in Indianapolis, Indiana

**Current Property Owner:** The United Methodist Church of Lee’s Summit

**Property:** The proposed Redevelopment Area contains approximately 3.69 acres and is bounded by Douglas Street on the northeast, 2<sup>nd</sup> Street on the southeast, Main Street on the southwest and 1<sup>st</sup> Street on the Northwest. A map showing the Redevelopment Area, overlaid on the previously approved plat, is attached to this memorandum.

**Reimbursement and Financing Structure:**

Developer is requesting reimbursement from two revenues sources:

**1. TIF Revenue – PILOTs**

- PILOTs: 100% of the PILOTs in the TIF Redevelopment Project area will be captured and used to repay Reimbursable Project Costs according to the budget set forth in Exhibit 3 of the TIF Plan. Developer estimates that the TIF Redevelopment Project will generate about \$15.9 million in PILOTs over the 23-year life of the TIF Plan. It is assumed in the Redevelopment Plan that property tax revenues will increase at a rate of 2.0% bi-annually.
- EATs: No EATs are projected to be captured because there will be no retail sales in the TIF Project Area.
- Reimbursable Project Costs: TIF revenue is proposed to reimburse about \$8.04 million in project costs, all for the structured parking.

**2. LCRA Redevelopment Plan – Sales Tax Exemption**

- Developer is requesting that an LCRA Redevelopment Plan be approved simultaneously with the TIF Plan.
- The benefits of the LCRA Redevelopment Plan for the Developer will be sales tax exemption on construction materials for the apartments and the structured parking, in these projected amounts:

Site Work and Infrastructure	-\$47,100
Building Construction	-\$1,022,070
Structured Parking	<u>-\$260,620</u>
<b>Total Sales Tax Exemption</b>	<b>-\$1,329,790</b>

**Redevelopment:** The Redevelopment Project is proposed to consist of land acquisition, demolition of structures, engineering, site preparation, construction of public infrastructure improvements, and the design and construction of private improvements consisting of an approximately 274 unit apartment complex along with structured and surface parking and other site improvements. Developer has indicated that the sanctuary structure at the northwest corner of Douglas and 2<sup>nd</sup> will not be demolished and will be incorporated into the new project.

**Property Investment and Valuation:**

- Current County market valuation of Redevelopment Area: \$1,003,436
  - Taxable Property Value in Redevelopment Project Area today is \$0 due to the church non-profit exemption from real property taxes.
- Total Project Costs: about \$51.8 million
- Projected assessed valuation of TIF Project Area after full build-out: about \$9.4 million

**Sources of Funds:** The project budget is set forth in *Exhibit 3* of the TIF Plan:

<b>Project Sources and Uses</b>			
Project Cost	Total	Projected TIF Reimbursed Costs	Developer Private Costs
Land Acquisition	\$2,800,000	\$0	\$2,800,000
Site Work/Infrastructure	\$1,500,000	\$0	\$1,500,000
less Ch. 100 sales tax exemption savings	-\$47,100		-\$47,100
<i>Adjusted Site Work/Infrastructure Cost</i>	<i>\$1,452,900</i>		<i>\$1,452,900</i>
Building Construction	\$32,550,000	\$0	\$32,550,000
less Ch. 100 sales tax exemption savings	-\$1,022,070		-\$1,022,070
<i>Adjusted Building Construction Cost</i>	<i>\$31,527,930</i>		<i>\$31,527,930</i>
Structured Parking	\$8,300,000	\$8,300,000	\$0
less Ch. 100 sales tax exemption savings	-\$260,620	-\$260,620	
<i>Adjusted Structured Parking Cost</i>	<i>\$8,039,380</i>	<i>\$8,039,380</i>	
Soft Costs/Other	\$8,000,000	\$0	\$8,000,000
<b>TOTAL PROJECT COSTS</b>	<b>\$51,820,210</b>	<b>\$8,039,380</b>	<b>\$43,780,830</b>
	<b>Projected TOTAL PROJECT COSTS</b>	<b>Projected TIF Reimbursed Costs</b>	<b>Developer Private Costs</b>

**Ownership and Development Structure**

- Current Ownership: The property is currently owned by the United Methodist Church and will be purchased by Developer for \$2.8 million.
- Ownership and redevelopment process after Council approval: If the City Council approves the incentive package including the LCRA Redevelopment Plan, then Developer will purchase the property and transfer ownership to the City. The City will own the property during the construction period and lease the property to Developer which will construct the project. City ownership during the construction period allows for the sales tax exemption on construction materials as a result of the companion LCRA Redevelopment Plan.

When the property is purchased by Developer, it will become taxable property. When the property is transferred to the City during the construction period, the property will again become tax-exempt but Developer will make payments during the period of City ownership pursuant to the LCRA Redevelopment Plan in the amount of what the taxes would have been if the property were privately owned during this period. These payments during the construction period will be treated as rent payments under a lease between the City and Developer pursuant to the LCRA Redevelopment Plan.

- TIF Project Area: The Redevelopment Area includes one TIF Redevelopment Project, which will be activated this year. TIF collection will begin when the Redevelopment Project is approved, and

may last for a maximum of 23 years. Developer will make payments during the construction period, while the property is owned by the City, in an amount equal to what the taxes would be based on the 2019 assessed valuation of \$1,003,436 as if the property were taxable.

**TIF Financing Options:** Reimbursement will start as pay-as-you go. Bonds may be issued at the City Council’s discretion and as provided in the redevelopment contract to finance Redevelopment Project Costs.

**Benefit to Taxing Districts:** The Cost-Benefit Analysis attached to the TIF Plan as *Exhibit 11* shows the projected tax revenues to be generated by the project for each taxing district if the project does not occur and if the project does occur with the use of TIF.

**Basis of Reimbursement and the “But For” Test:**

- The basis of the reimbursement request is that reimbursement needed to achieve a rate of return that is sufficient to cause Developer to undertake the project.
- The cash flow and rate of return analysis based on Developer’s calculation in *Exhibit 10* and Columbia Capital’s calculation in their report financial advisor engaged by the City) are summarized as follows:

	Developer Calculation – Equity Rate of Return	Columbia Capital – City Financial Advisor Calculations	
		Project Rate of Return	Equity Rate of Return
Without Incentives	1.44%	3.74%	-0.05%
With Incentives	8.89%	6.19%	8.56%

**Comparison to City’s Economic Development Policy:** The City’s Economic Development Policy Guidelines state that typically incentives using TIF will be an amount not to exceed 25% of the total private development costs. The TIF assistance is about **15.5%** of the total project costs. Developer has not separately identified any of the project costs that are only public in nature. All public incentives (TIF and sales tax exemption together) are about **18.1%** of the total project costs.

**Required Findings for TIF Plan:** The following is a list of the findings required to be made by the City Council with a recommendation from the TIF Commission, along with references to the pages in the TIF Plan where supporting information may be found:

- **Blight:** The Redevelopment Area must be a blighted area, as such term is defined in Section 99.805(1), RSMo, as follows:

an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an

economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.

The City Council found that the Redevelopment Area, as a parcel in the larger downtown area, is a blighted area pursuant to the Land Clearance for Redevelopment Act (“**LCRA Act**”) through the adoption of Ordinance No. 7228 on September 10, 2012. The definition of “blighted area” under the LCRA Act matches the definition of “blighted area” under the TIF Act and therefore the previous finding by the City Council satisfies the TIF Act requirement.

The TIF Plan is also accompanied by a site-specific Blight Study set forth as *Exhibit 5*, demonstrating that the Redevelopment Area is still a blighted area as such term is defined in Section 99.805(1), RSMo, due to the presence of deteriorating site improvements and that the property is an economic liability in its present condition and use. The TIF Plan is also accompanied by an affidavit which is set forth in *Exhibit 9*, signed by the Developer, attesting to the conditions of the Redevelopment Area which qualify the area as a blighted area

- **But-For Test:** The proposed redevelopment must satisfy the “but for” test set forth in Section 99.810, RSMo, in that the Redevelopment Area has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing. The Redevelopment Area has been used as a church property for many years and has not been redeveloped. *Exhibit 11* states that the rate of return for the project without incentives is 1.44%, and the rate of return with incentives is 8.89%. The TIF Plan is accompanied by an affidavit, signed by the Developer, attesting to the “but for” test (*Exhibit 13*).

**City Financial Advisor Review:** Columbia Capital has prepared a report for the TIF Commission which reaches the following conclusions:

- Developer’s projected project costs are reasonable.
  - Developer’s vacancy assumptions are consistent with the Kansas City market.
  - Developer’s revenue projections are reasonable.
  - Developers project rate of return with and without incentives is reasonable, and Columbia Capital’s rate of return calculation substantially matches Developer’s calculation.
  - The requested incentives (TIF and sales tax exemption) are required for the Project to develop as proposed by Developer.
  - Developer’s proposal meets the “but for” test.
- **Consistency with the Comprehensive Plan:** The Old Lee’s Summit Development Master Plan (February 2004) (the “Downtown Plan”) is the portion of the City’s comprehensive plan that sets forth land use recommendations and goals for the downtown area including the Redevelopment Area. The Redevelopment Area is designated as part of the “Downtown Core” (see Map III.2) under the Downtown Plan, but the parcel does not have a site-specific land use designation. The Downtown Plan indicates at page 48 that one of the City’s goals for the Downtown Core is to encourage the market absorption of between 300 and 450 dwelling units, which could occur on several parcels in the Downtown Core.
  - **Relocation Plan:** The TIF Plan includes as *Exhibit 8* a Relocation Assistance Plan as required by the TIF Act.

- **Cost-Benefit Analysis:** A cost-benefit analysis is required showing the economic impact of the TIF Plan on each taxing district and political subdivision within the Redevelopment Area if the project is built pursuant to the TIF Plan or is not built. A cost-benefit analysis has been provided in *Exhibit 11* to the TIF Plan.
- **Financial Feasibility:** There must be evidence that the proposed project is financially feasible for the Developer to construct with TIF assistance. Developer has provided *Exhibit 10* as evidence that the project is financially feasible to undertake with public assistance. Columbia Capital has verified this conclusion based on their independent analysis.
- **TIF Plan Contents:** The TIF Plan must contain the following information, and the page and exhibit references below indicate where the information may be found in the TIF Plan:
  - A general description of the program to be undertaken to accomplish its objectives (*Pages 3-5, 14*).
  - The estimated redevelopment project costs (*Page 4, 15 and Exhibit 3*).
  - The anticipated sources of funds to pay the costs (*Page 16 and Exhibits 3 and 6*).
  - Evidence of the commitments to finance the project costs (*Exhibit 7*).
  - The anticipated type and term of the sources of funds to pay costs (*Pages 15-18*).
  - The anticipated type and terms of the obligations to be issued (*Pages 17*).
  - The most recent equalized assessed valuation of the property within the Redevelopment Area which is to be subjected to payments in lieu of taxes and economic activity taxes pursuant to Section 99.845, RSMo (*Page 18 and Exhibit 4*).
  - An estimate as to the equalized assessed valuation after redevelopment (*Page 18 and Exhibit 4*).
  - The general land uses to apply in the Redevelopment Area (*Pages 3, 14-15*).
  - Estimated dates for the retirement of obligations incurred to finance redevelopment project costs, and said dates are not more than twenty-three (23) years from the adoption of an ordinance approving a Redevelopment Project within the Redevelopment Area (*Page 16 and Exhibit 6*).
  - Estimated dates of completion of the redevelopment project (*Exhibit 6*).
- **Plan Requirements:** The TIF Plan must also meet the following requirements, and the page and exhibit references below indicate where the information supporting these requirements may be found in the TIF Plan:
  - The TIF Plan is in conformance with the Comprehensive Plan for the development of the City as a whole (*Pages 14-15, 21*).
  - A Relocation Assistance Plan has been developed for relocation assistance for businesses and residences, and the relocation of any business or residents in the Redevelopment Area, if necessary, will take place in accordance with the Relocation Assistance Plan (*Page 22 and Exhibit 8*).

- The TIF Plan does not include the initial development or redevelopment of any gambling establishment (*Page 22*).
- The areas selected for the Redevelopment Project include only those parcels of real property and improvements thereon which will be directly and substantially benefited by the Redevelopment Project improvements (*Exhibit 1 & 2*).

**Required Findings for LCRA Redevelopment Plan:** The following findings are required to be made by the City Council for the LCRA Plan:

1. **Blight:** The Redevelopment Area must be a blighted area, as such term is defined in Section 99.320(3), RSMo, as follows:

an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.

The City Council found that the Redevelopment Area, as a parcel in the larger downtown area, is a blighted area pursuant to the Land Clearance for Redevelopment Act (“**LCRA Act**”) through the adoption of Ordinance No. 7228 on September 10, 2012.

The Plan is also accompanied by a site-specific Blight Study set forth as *Exhibit 5*, demonstrating that the Redevelopment Area is still a blighted area, due to the presence of deteriorating site improvements and that the property is an economic liability in its present condition and use. The Plan is also accompanied by an affidavit which is set forth in *Exhibit 9*, signed by the Developer, attesting to the conditions of the Redevelopment Area which qualify the area as a blighted area.

2. **Necessity:** The City Council must find that redevelopment of the Redevelopment Area is necessary and in the interests of the public health, safety, morals and welfare of the residents of the City. Columbia Capital has prepared a report which examines the financial projections of the Plan reaches the following conclusions:

- Developer’s projected project costs are reasonable.
- Developer’s vacancy assumptions are consistent with the Kansas City market.
- Developer’s revenue projections are reasonable.
- Developers project rate of return with and without incentives is reasonable, and Columbia Capital’s rate of return calculation substantially matches Developer’s calculation.
- The requested incentives (TIF and LCRA sales tax exemption) are required for the Project to develop as proposed by Developer.
- Developer’s proposal meets the “but for” test under the TIF Act, which is equivalent to the necessity finding under the LCRA Act.

The cash flow and rate of return analysis are summarized above in the memo.

3. **Conformance with the Comprehensive Plan:** The City Council must find that the LCRA Plan is in conformance with the Comprehensive Plan for the City. The City Council must find that the proposed land uses and building requirements in the Redevelopment Area are designed with the general purpose of accomplishing, in conformance with the Comprehensive Plan, a coordinated, adjusted and harmonious development of the community and its environs which, in accordance with present and future needs, will promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency and economy in the process of development. The LCRA Plan addresses several factors that are addressed in the LCRA Act including providing for adequate parking, the promotion of healthful and convenient distribution of population, the provision of adequate public facilities, the promotion of sound design and arrangement and the efficient expenditure of public funds, the prevention of the recurrence of unsanitary and unsafe dwelling accommodations, and blight clearance.

The Old Lee's Summit Development Master Plan (February 2004) (the "**Downtown Plan**") is the portion of the City's comprehensive plan that sets forth land use recommendations and goals for the downtown area including the Redevelopment Area. The Redevelopment Area is designated as part of the "Downtown Core" (see Map III.2) under the Downtown Plan, but the parcel does not have a site-specific land use designation. The Downtown Plan indicates at page 48 that one of the City's goals for the Downtown Core is to encourage the market absorption of between 300 and 450 dwelling units, which could occur on several parcels in the Downtown Core. The LCRA Plan is therefore in conformity with Downtown Plan as the City's Comprehensive Plan document for the Redevelopment Area.