

Sayers, Margery

From: Price, Maiko S. <mprice@MilesStockbridge.com>
Sent: Monday, November 20, 2017 5:06 PM
To: Weinstein, Jon
Cc: CouncilMail; Greg Fitchitt (Greg.Fitchitt@howardhughes.com); Stalfort, John A.
Subject: Letter to Honorable Jon S. Weinstein re CR 149 11-20-2017
Attachments: Letter to Honorable Jon S Weinstein re CR 149 11-20-2017.pdf; Comparison TIF Council Rule Resolution (10-26-17) - TIF Council Rule Resolution.doc

Councilmember Weinstein,

Please find attached letter from John Stalfort regarding CR 149 along with the proposed amendments to the text of CR 149 for your review.

Thank you,
Maiko

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Sayers, Margery

From: Price, Maiko S. <mprice@MilesStockbridge.com>
Sent: Monday, November 20, 2017 5:12 PM
To: Terrasa, Jen
Cc: CouncilMail; 'Greg Fitchitt (Greg.Fitchitt@howardhughes.com)'; Stalfort, John A.
Subject: Letter to Honorable Jon S. Weinstein re CR 149 11-20-2017
Attachments: Letter to Honorable Jon S Weinstein re CR 149 11-20-2017.pdf; Comparison TIF Council Rule Resolution (10-26-17) - TIF Council Rule Resolution.doc

Councilmember Terrasa,

Please find attached letter from John Stalfort to Councilmember Weinstein regarding CR 149 along with the proposed amendments to the text of CR 149 for your review.

Thank you,
Maiko

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Sayers, Margery

From: Price, Maiko S. <mprice@MilesStockbridge.com>
Sent: Monday, November 20, 2017 5:10 PM
To: Sigaty, Mary Kay
Cc: CouncilMail; 'Greg Fitchitt (Greg.Fitchitt@howardhughes.com)'; Stalfort, John A.
Subject: Letter to Honorable Jon S. Weinstein re CR 149 11-20-2017
Attachments: Letter to Honorable Jon S Weinstein re CR 149 11-20-2017.pdf; Comparison TIF Council Rule Resolution (10-26-17) - TIF Council Rule Resolution.doc

Councilmember Sigaty,

Please find attached letter from John Stalfort regarding CR 149 along with the proposed amendments to the text of CR 149 for your review.

Thank you,
Maiko

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Sayers, Margery

From: Price, Maiko S. <mprice@MilesStockbridge.com>
Sent: Monday, November 20, 2017 5:09 PM
To: Fox, Greg
Cc: CouncilMail; 'Greg Fitchitt (Greg.Fitchitt@howardhughes.com)'; Stalfort, John A.
Subject: Letter to Honorable Jon S. Weinstein re CR 149 11-20-2017
Attachments: Letter to Honorable Jon S Weinstein re CR 149 11-20-2017.pdf; Comparison TIF Council Rule Resolution (10-26-17) - TIF Council Rule Resolution.doc

Councilmember Fox,

Please find attached letter from John Stalfort to Councilmember Weinstein regarding CR 149 along with the proposed amendments to the text of CR 149 for your review.

Thank you,
Maiko

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Sayers, Margery

From: Price, Maiko S. <mprice@MilesStockbridge.com>
Sent: Monday, November 20, 2017 5:08 PM
To: Ball, Calvin B
Cc: CouncilMail; 'Greg Fitchitt (Greg.Fitchitt@howardhughes.com)'; Stalfort, John A.
Subject: Letter to Honorable Jon S. Weinstein re CR 149 11-20-2017
Attachments: Letter to Honorable Jon S Weinstein re CR 149 11-20-2017.pdf; Comparison TIF Council Rule Resolution (10-26-17) - TIF Council Rule Resolution.doc

Councilmember Ball,

Please find attached letter from John Stalfort to Councilmember Weinstein regarding CR 149 along with the proposed amendments to the text of CR 149 for your review.

Thank you,
Maiko

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John A. Stalfort
202-465-8414
jstalfor@milesstockbridge.com

November 20, 2017

Honorable Jonathan S. Weinstein
Council Chairperson
County Council of Howard County, Maryland
George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043

Re: Council Resolution 149-2017 (CR149)

Dear Mr. Weinstein:

I am writing in my role as TIF counsel to The Howard Research And Development Corporation in connection with CR 149 introduced by you as a result of certain concerns arising from the issuance of the first series of the Downtown Columbia TIF Bonds.

By way of background, I have worked as a lawyer in public finance my entire career – over 40 years – and have a special concentration in tax increment financing and special tax district financing for almost 20 years. During that time, I drafted the original Howard County TIF Policy Guidelines when Miles & Stockbridge was serving as bond counsel to Howard County in an effort to implement best practices in connection with the use of TIF as an economic development tool. I have also served on the Council of Development Finance Agencies TIF Policy Task Force which was a leader in promoting TIF best practices throughout the United States. So, I am very aware of the need for transparency and trust among all stakeholders to have a successful TIF deal.

My conceptual comments to CR 149 fall into two categories: (i) the nature of what should be included in the authorizing TIF legislation, and (ii) the timing of delivery of any new information to the County Council after initial enactment of the authorizing legislation.

In connection with its deliberations concerning any proposed TIF legislation, the County Council should receive summaries of the information and financial analyses received by the Department of Finance pursuant to the County's TIF Guidelines. Such information should include preliminary estimates of the costs of all of the proposed public improvements to be financed with proceeds of the bonds or by the developer and a description of any public improvements the Department of Finance determines not to be eligible to be financed with proceeds of the Bonds. At this stage of the transaction, specific details on costs and public improvements are typically not finalized.

There are two reasons the authorizing TIF legislation should not contain specific, limiting details on public improvement descriptions and costs: (i) that level of detailed information is either not available, or otherwise still very conceptual, at the time of enacting the legislation, and (ii) it prevents crucial flexibility in the finalization of the plan of finance. Why not wait to enact the legislation until these facts are clearer? Every TIF transaction is different. There may be a need to move quickly to establish the base value of the property in the TIF district and preserve the tax increment for the bond debt service. There may be a need to establish the district or bond authorization in order to advance other aspects of the project's development, such as other financing components or major tenant leases. There may be countless other reasons for a particular transaction. Best practice is to make the authorizing legislation as flexible as possible.

So, how to assure that the proceeds of the TIF bonds authorized by the legislation are spent in a transparent manner consistent with the County Council's legislative intent? I concur that a process should be required for the County Executive to inform the County Council of the final use of bond proceeds and costs of the public improvements, and if those costs are substantially different from the information initially provided to the County Council, updates to any of the financial analyses provided to the County Council during its initial consideration of the legislation. This will allow the County Council an opportunity for further discussion on these matters with the Administration and the developer.

However, the time frame for providing this updated information must recognize the often urgency of mailing the offering document for the bonds to take advantage of capital markets opportunities. The 45 and 60 days proposed in CR 149 are not reasonable for these types of financings. I would suggest 15 business days as a more appropriate time frame.

I have attached for your review proposed amendments to the text of CR 149 which reflect the foregoing comments.

I hope that the foregoing comments with respect to CR 149 are informative. I certainly support the concept of transparency you are attempting to instill in the County's process. Please let me know if you have any questions on these comments.

Sincerely,



John A. Stalfort

cc: Honorable Calvin B. Ball
Honorable Gregory Fox
Honorable Mary Kay Sigaty
Honorable Jennifer R. Terrasa

NOTE: [[text in brackets]] indicates deletions from existing language; TEXT IN SMALL CAPITALS indicates additions to existing language. Strike out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 (1) THE LEGISLATION SHALL INCLUDE A DESCRIPTION OF THE PUBLIC IMPROVEMENT
2 ~~BUDGET THAT IDENTIFIES IMPROVEMENTS~~

3 ~~ONLY THOSE IMPROVEMENTS~~ PROPOSED TO BE FINANCED WHOLLY OR PARTLY BY THE PROCEEDS OF
4 THE BONDS AUTHORIZED BY THE LEGISLATION.

5 ~~(2) FOR THE IMPROVEMENTS IDENTIFIED IN PARAGRAPH (1) OF THIS SUBSECTION, THE~~
6 ~~LEGISLATION SHALL PROVIDE:~~

7 ~~(I) A DESCRIPTION OF THE IMPROVEMENTS;~~

8 ~~(II) DETAIL ON THE TOTAL ESTIMATED COST OF THOSE IMPROVEMENTS; AND~~

9 ~~(III) THE COSTS THAT ARE ELIGIBLE FOR USE OF BOND PROCEEDS.~~

10 (c) *SPECIFIC AUTHORIZATION.*

11 IF THE ADMINISTRATION AND THE DEVELOPER PRESENT A HIGH LEVEL OF CERTAINTY
12 ABOUT EXACTLY WHICH PUBLIC IMPROVEMENTS ARE PLANNED TO BE FINANCED BY THE PROCEEDS
13 OF THE BONDS AUTHORIZED BY THE LEGISLATION, THE COUNTY COUNCIL MAY CHOOSE TO LIMIT
14 THE
15 AUTHORIZATION SPECIFICALLY TO CERTAIN OF THOSE PUBLIC IMPROVEMENTS ~~INCLUDED~~ DESCRIBED
16 IN THE ~~PUBLIC IMPROVEMENT~~ LEGISLATION.

17 ~~BUDGET.~~ (D) TIF GUIDELINES

IN CONNECTION WITH ITS CONSIDERATION OF THE LEGISLATION, THE
COUNTY COUNCIL SHALL RECEIVE SUMMARIES OF THE INFORMATION AND FINANCIAL
ANALYSES RECEIVED BY THE DEPARTMENT OF FINANCE PURSUANT TO THE COUNTY'S TIF
GUIDELINES. SUCH INFORMATION SHALL INCLUDE (I) PRELIMINARY ESTIMATES OF THE
COSTS OF ALL OF THE PROPOSED PUBLIC IMPROVEMENTS TO BE FINANCED WITH
PROCEEDS OF THE BONDS OR BY THE DEVELOPER, AND (II) A DESCRIPTION OF ANY
PUBLIC IMPROVEMENTS THE DEPARTMENT OF FINANCE DETERMINES NOT TO BE ELIGIBLE
TO BE FINANCED WITH PROCEEDS OF THE BONDS.

18 ~~(D) SAFEGUARDS REQUIRED FOR FLEXIBILITY~~ TRANSPARENCY.

19 ~~THE COUNCIL MAY CHOOSE TO DEFINE THE SCOPE OF THE PUBLIC IMPROVEMENTS TO~~
20 ~~PROVIDE GREATER FLEXIBILITY IN THE POTENTIAL USE OF THE BONDS AUTHORIZED BY THE BILL;~~

21 ~~HOWEVER,~~ TO ENSURE THAT ~~TAX INCREMENT REVENUES~~ PROCEEDS OF THE BONDS AUTHORIZED BY
22 THE LEGISLATION ARE SPENT IN A TRANSPARENT MANNER

23 CONSISTENT WITH THE COUNTY COUNCIL'S LEGISLATIVE INTENT, ~~SUCH FLEXIBILITY SHALL BE:~~

24 ~~ACCOMPANIED BY PROVISIONS REQUIRING THAT:~~

25 (1) AT LEAST ~~45~~ 15 BUSINESS DAYS BEFORE ISSUING A PRELIMINARY LIMITED
26 OFFERING

27 MEMORANDUM OR SIMILAR DOCUMENT, THE COUNTY EXECUTIVE SHALL SEND TO THE

23 COUNTY COUNCIL:

24 (i) ~~AN UPDATED~~ A DEFINITIVE LIST OF THE PUBLIC IMPROVEMENT BUDGET
~~FOR THE IMPROVEMENTS~~ TO BE FINANCED WITH THE PROCEEDS OF THE BONDS AUTHROIZED BY THE
LEGISLATION AND THE BUDGETED COSTS FOR SUCH PUBLIC IMPROVEMENTS

25 ~~TO BE INCLUDED IN THE MEMORANDUM~~; AND

26 (ii) A DOCUMENT THAT HIGHLIGHTS ANY CHANGES TO THE PLAN FOR
27 THE PUBLIC IMPROVEMENTS TO BE FINANCED WITH THE PROCEEDS OF THE BONDS
BETWEEN THE PROPOSED PLAN THAT WAS PRESENTED TO THE COUNCIL WHEN THE

28 COUNTY COUNCIL AUTHORIZED THE TAX INCREMENT FINANCING ENACTED THE
LEGISLATION AND THE PLAN TO BE

29 ~~INDICATED~~ DESCRIBED IN THE LIMITED OFFERING MEMORANDUM AND, IF THE PLAN
INCLUDES ANY PUBLIC IMPROVEMENT

30 WHICH THE DEPARTMENT OF FINANCE HAD PREVIOUSLY DETERMINED TO BE

1 INELIGIBLE, PROVIDES AN EXPLANATION OF THE CHANGE IN CIRCUMSTANCES OR
2 THE RATIONALE FOR THE POLICY REINTERPRETATION WHICH RESULTED IN THE
3 RECONSIDERATION OF ELIGIBILITY; AND

4 ~~(2II)~~ IF THE CHANGES TO THE ~~PUBLIC IMPROVEMENT BUDGET EXCEED A~~
CERTAIN PRELIMINARY ESTIMATES OF THE TOTAL COSTS OF THE PUBLIC IMPROVEMENTS TO BE FUNDED
WITH THE PROCEEDS OF THE BONDS EXCEED %.

5 ~~THRESHOLD SET BY THE COUNCIL WITHIN THE BOND AUTHORIZING LEGISLATION, SUCH AS~~
6 ~~A PERCENTAGE OF THE DOLLAR VALUE OF THE TOTAL IMPROVEMENT COSTS PLANNED TO BE~~
7 ~~FUNDED BY THE TAX INCREMENT FINANCING, THEN:~~

8 ~~(I) THE SUBMISSION TO THE COUNTY COUNCIL SHALL BE PROVIDED AT~~
9 ~~LEAST 60 DAYS BEFORE ISSUING THE PRELIMINARY LIMITED OFFERING~~
10 ~~MEMORANDUM OR SIMILAR DOCUMENT;~~

11 ~~(II) THE SUBMISSION SHALL INCLUDE THE SAME COMPONENTS DESCRIBED IN~~
12 ~~PARAGRAPH (1) OF THIS SUBSECTION; AND~~

13 ~~(III) THE SUBMISSION SHALL INCLUDE~~ UPDATES OF ANY OF THE FINANCIAL
14 ANALYSES PROVIDED TO THE COUNTY COUNCIL DURING ITS CONSIDERATION OF
15 THE LEGISLATION AUTHORIZING THE ISSUANCE OF THE BONDS.

16

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	28
Deletions	36
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	64