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December 4, 2018

Via E-Mail & U.S. Mail

Mayor Jerry Smith
Mayor's Office
200 South Fourth Street, Room 203
DeKalb, IL 60115

Mayor Smith,

I appreciate our recent discussions as to the financial events presently occurring in the City of DeKalb. Following our last talk, we watched the November 26, 2018 meeting once it was placed online. It was a step in the right direction that the DeKalb City Council voted to approve an Ordinance adding Chapter 37 – “Tax Increment Financing Regulations” to your city code. We are encouraged by this step to provide more transparency over TIF funds and their usage. We were further pleased to hear the comments by Council member Faivre, who is seeking further reporting and clarity as far as TIF fund usage. It also induced fleeting hope to hear so much energy and discussion on the concept of working cooperatively with the other taxing districts prior to moving forward with proposed TIF 3.

However, the remainder of the meeting gave us great pause and leaves us with the distinct impression that the City has decided to move in the opposite direction from collaboration and resolution. Initial discussion on working with the other taxing districts spiraled into a completely different direction. Instead, it appears the City has moved forward with their initial September 14, 2018 threats (via open letter to the taxing districts¹). The decision to

¹ “In looking at this matter, the City has until December 31, 2018 to approve projects to utilize funding from TIF 2 and has the remaining term of TIF 1 to approve projects from TIF 1. In the absence of an agreement to pay these sums as surplus, the city is under no obligation to do so. The City’s plan has been, up to this point, to utilize all available funding for TIF projects, which means that in the absence of the City’s agreement to pay these funds as surplus, they will not be available to the other taxing districts.” *See September 14, 2018 correspondence signed by Jerry Smith and Molly Talkington.*

not only rebuff the concept of placing \$11,250,000.00 in escrow to allow for a forensic audit – but to instead spend the subject TIF funds prior to December 31, 2018, is an unfortunate and disconcerting turn of events.

As you are aware, the public was notified in that November 26, 2018 meeting that the previously discussed \$11,250,000.00 was calculated looking at the administrative cost transfers made from TIF 1 and 2 to the City's general fund over the many years in question. Thus, the public has been put on notice that there are irregularities in the past and that this amount was being allocated in order to provide "reimbursement of the total administrative fees the City charged to the TIF since the year 2000." (See City Memorandum dated November 21, 2018). As such, there appears to be no dispute as to improper TIF fund usage in the past, but rather only to what extent and at what expense to the surrounding taxing districts and taxpayers².

Yet, even with this, the City Council refused to focus on the fact that mistakes were made and that the exact amounts should be determined. The Council and its staff took the position that documentation on such an issue would be hard to locate and thus, it was not something to further investigate. This position is exactly why questions have been raised and why the City needs to step away from controlling the review. The fact that evidence may be difficult to find is not the proper basis for dropping this issue and refusing to release TIF funds to the other taxing districts and the citizens that they too serve. Nor is it proper to ignore these issues because the JRB was not able to detect these problems previously, when they were evidently not provided the necessary information to do so.

The citizens of our community deserve to know exactly what has occurred and how it is being addressed. So, in an effort to demonstrate why we are concerned, we will explain some of the more egregious facts that we have gathered through the City's recent actions. According to the City's memorandums and statements on November 26, 2018:

- \$11,250,000.00 has been previously transferred from TIF 1 and TIF 2 to the City's general fund for administrative costs and are at question by the taxing districts, citizens and the City itself.
 - *Yet, the City of DeKalb has now voted to not reimburse the taxing districts these funds, nor perform an audit or even establish an escrow fund while an accurate tally is completed.*
- \$5,420,000.00 is to automatically be declared a surplus at the end of the year, no matter what occurs.
 - *Whether the taxing districts had agreed to waivers or not – those funds would have been utilized as half of the proposed IGA's "reimbursement" – even though they are already to be released by statute.*

² It is not lost on us that the City had the option to move forward with making their proposed \$11,250,000.00 payment to the separate taxing districts on a proportional basis following their choice not to place funds in escrow. Yet, the City apparently chose not to because the taxing districts were not providing waivers for prior errors within an Intergovernmental Agreement.

- \$2,870,000.00 in TIF 2 funds will now be earmarked by the end of the year so as to prevent distribution to the other taxing districts.
 - *This is the position the City has taken. These funds too were expected to be utilized for reimbursement upon them going into surplus at the end of the year. Instead, the City has devoted itself to stopping that process.*

No matter how loosely the City and its advisers feel the Tax Increment Allocation Redevelopment Act (“TIF Act”) restricts your actions, there is a legal *and* ethical manner by which the collective taxing districts are all expected to work together. We are quite certain that the new course being taken is not in either the public or the other taxing districts’ best interests. It is surely not in the spirit of the TIF Act’s purpose as expressed in 65 ILCS 5/11-74.4-2, or the securities that were to be offered the affected taxing districts by way of surplus disbursement.

As we have said before, the actual proper, or improper, numbers allocated have not been clearly presented to anyone in this matter. **Hence the need for funds to be frozen/placed in escrow and a forensic audit to be completed.** The fact that the City has now openly and emphatically encouraged its staff to spend the remaining balance of TIF funds so as to prevent a surplus rising above \$5,420,000.00 is simply outrageous. It is being done with one sole purpose - to prevent other taxing districts from receiving it. It is not about the citizens’ needs, blight, or achieving the purposes of a properly ran TIF. It is a last-minute scramble to punish the taxing districts for raising questions. There is absolutely nothing cooperative in these actions. Instead, these recent events demonstrate the basis for fears that citizens have with the TIF process and the reason that individual taxing districts are often uncomfortable with their expansion.

This office is asking the City and its advisers to take a step back and consider what is right for all of the people of DeKalb County. The taxing districts should be working in coordination to provide a better life for everyone within its borders. Political bodies should not attempt to take from each other in hopes of some form of political one-upping. DeKalb County as a whole succeeds and fails with the success and failure of the City of DeKalb – the converse should be more carefully considered by the City Council. All of the taxing districts need each other to thrive.

With this new insight, we again request that all current TIF 1 and TIF 2 funds should be placed into escrow, or otherwise frozen, including the \$2,870,000.00 (approx.) now on the spending block, and that none be utilized for any purpose other than the expenses involved in performing a forensic audit or paying any expenses that the JRB determines are necessary by a 3/4 majority vote. We also ask that *you*, as the taxing body at the center of this, call a formal meeting of the JRB taxing districts and determine a plan to obtain an auditor with their input and appointment. While we understand that the City’s position gives no weight to the JRB above an advisory role – it would appear that new territory has been tread upon and it is time to seek their assistance in this. Give the other taxing districts a role in determining how to move forward with this problem, and actually take the cooperative action the City Council had promoted in their meeting.

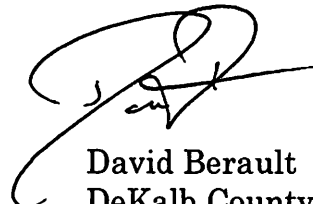
As you recall, we previously stated that our office is not comfortable with the City's approach and the position it had placed everyone in. Currently, we are even more concerned with the City's recent reaction. To that end, this office encourages the City of DeKalb to work *with* the JRB and give them a role in the process of accounting for the funds at issue. It is still our hope that the City will seek to take the right path and not to treat the taxing districts as adversaries in providing services to the community at large. It is because of that hope that we are again copying all of the taxing districts on this correspondence, so as to encourage public dialog to take place with them.

In closing, we know that you were seeking to have a meeting with this office in the coming weeks to discuss this matter. However, it appears that the City has presently entrenched itself in a position that is diametrically opposed to creating an escrow of funds, coordinating with the JRB on a solution or investigating the allegations made regarding TIF fund usage. As such, the purpose for such a meeting has been rendered moot by the described actions. Should the City of DeKalb change course, and be prepared to engage the JRB and allow for a forensic audit, then we would be pleased to assist that body in obtaining such an auditing firm. Until that time, we leave it to you and the taxing districts to determine the resolution of this matter.

Very truly yours,



Rick Amato
DeKalb County State's Attorney
DeKalb County, Illinois



David Berault
DeKalb County Assistant State's Attorney
Chief of Civil Bureau

cc: Bill Cummings - President, The DeKalb Public Library; Victoria Newport - School Board President, The DeKalb Community Unit School District No. 428; Jennifer Jeep Johnson - Township Supervisor, DeKalb Township; Craig Smith - Highway Commissioner, DeKalb Township Road District; Phil Young - President, The DeKalb Park District; Dr. Laurie Borowicz - President, Kishwaukee Community College; Mark Pietrowski, Jr. - Chairman, The County of DeKalb and President, The DeKalb Forest Preserve District; Dennis J. Collins - President, Kishwaukee Water Reclamation District; Gary Hanson - DeKalb County Administrator; Dean Frieders - Attorney for the City of DeKalb