

COLLEGIATE HOUSING AND THE “BUT FOR” TEST

On March 27th, the Lincoln Journal Star published an article written by Senator Mike Groene discussing Lincoln’s use of Tax Increment Financing. Lincoln’s recent history includes a number of very successful TIF projects. Lincoln has also been lauded by a number of people, including Senator Groene at a recent hearing, for doing “a very good job” with TIF projects and using TIF the right way. With that history in mind, it is appropriate to address some of the points raised in Senator Groene’s article.

The Nebraska Constitution sets forth the underlying authority for what is commonly referred to as “tax increment financing.” It authorizes cities to incur indebtedness for the purpose of “rehabilitating, acquiring or redeveloping substandard and blighted property in a redevelopment project as determined by law”. Neb. Const. Art. VIII, Sec. 12 (1978). A redevelopment project is defined, in part, in Neb. Rev. Stat. § 18-2103 (12) to include any work or undertaking in one or more community redevelopment areas: (a) to acquire substandard and blighted areas or portions thereof . . . the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such substandard and blighted areas “to clear any such areas by demolition or removal of existing buildings. . .and to install, construct, or reconstruct streets. . .public spaces, public parking facilities, sidewalks. . . .”

The Collegiate Housing Project satisfies each of these undertakings. Trinitas will be acquiring a parcel of land in an area declared to be substandard and blighted. Trinitas will be demolishing an existing building and constructing a new multi-story housing project. Finally, in order to support the redevelopment of the project site, the City will be constructing a public parking facility consisting of a surface parking lot.

Notwithstanding the merits of the project, it is Senator Groene’s opinion, as expressed in his article published in the Lincoln Journal Star, that the proposed Trinitas Ventures 172-unit Collegiate Housing Project does not meet the Community Development Law “but for” test and should not be approved. Senator Groene’s opinion is apparently based entirely upon a March 4th Journal Star article about the project which included the following statement, “Developer is not asking the City for tax incentives to build the complex, but has agreed to partner with the City to use (TIF) . . . to pay for parking improvements.”

Senator Groene is correct in stating that the use of TIF is limited by what is commonly referred to as the “but for” test in Neb. Rev. Stat § 18-2116. The “but for” consideration is a question of public policy left to the legislative discretion of the City Council.

Specifically, § 18-2116 provides that a city council may approve a redevelopment plan using TIF if the city council finds (1) that the redevelopment project would not be economically feasible without the use of TIF, (2) that the redevelopment project would not occur in the community redevelopment area without the use of TIF, and (3) the cost and benefits of the redevelopment project, including cost and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the city council and have been found to be in the long-term best interest of the community impacted by the redevelopment project. This is a decision made after analysis and consideration of the evidence presented to the city council following a public hearing. In the case of the college housing project, the City Council adopted Resolution No. A-88830, approving an amendment to the Lincoln Center Redevelopment Plan. This amendment added the South Haymarket Redevelopment Project (which included the Phase 1 Collegiate Housing Subproject)

to the Lincoln Center Redevelopment Plan and authorized the use of TIF for the Collegiate Housing. This approval was made by the City Council at its regularly scheduled meeting held on March 30, 2015. Before adopting Resolution No. A-88830, the City Council first held a public hearing in relation thereto. Approval of the use of TIF for the Collegiate Housing is supported by the evidence offered at the hearing. This included direct testimony in the record that “but for” the use of TIF, neither the 172-unit complex nor the additional on-street parking stalls and public off-street surface parking lot would be built. Trinitas did not ask the City for tax incentives to reduce its cost to acquire the project site, demolish the existing building on the site, or construct the apartment complex. However, Trinitas did make it clear that its ability to obtain loan financing for this project is 100% dependent and contingent upon Trinitas having guaranteed access to a permanent 200 parking stalls from the City in close proximity to the project site for use by its tenants. Moreover, the record is equally clear that the City has no existing parking facilities to satisfy Trinitas’ long-term parking needs and that “but for” the use of TIF, the City would not construct parking required by the complex in order for Trinitas to move forward with the project.

Lincoln’s Urban Development and Law Departments believe that Lincoln’s TIF projects have been developed and implemented in a manner consistent with the requirements of the Nebraska Community Development Law and State Constitution. We continue to welcome discussion regarding the procedures that we have developed in utilizing TIF as a redevelopment tool as well as Lincoln’s numerous successful TIF projects.