

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: April 23, 2010

MEMORANDUM

TO: Mayor David J. Cieslewicz
Members of the Common Council

FROM: Joe Gromacki, TIF Coordinator
Anne Zellhoefer, Assistant City Attorney

RE: TAX INCREMENTAL FINANCING LOANS TO MONROE NEIGHBORS, LLC

Background

In 2001, Ken Kopps grocery on Monroe Street closed its doors. After two failed attempts to redevelop the site, a Fort Atkinson investor sold the property to Monroe Neighbors, LLC for \$2.3 million. In addition, Monroe Neighbors purchased an adjacent City parking lot and agreed to replace the 24 City stalls in its new development. After several plan variations, Monroe Neighbors proposed a 52-unit residential condominium atop a 12,000 square foot grocery with 129 parking stalls—39 underground stalls for sole use of the grocery.

The total amount of TIF at 50% (per the TIF Policy's "50% Rule") was estimated at \$1,983,000. The gap demonstrated by the project was \$2,322,000—about 59% of the TIF generated by the project. Council approval of this amount would have required an exception to TIF Policy.

Staff was concerned that the project was the only means of generating tax increment within TID 33--a two-parcel, "single purpose" TID. As such, the City would have no financial cushion if the project failed to meet projections. In response, the City forecasted a conservative, four-year value growth schedule assuming that the condominium units would sell at a slower pace (about 13 units per year over 4 years), enabling the developer ample time to sell units and thereby lowering the amount of annual tax increment guaranty. On January 3, 2005 the City presented to Monroe Neighbors the following TIF estimate:

City's Incremental Value of Project

Condominium	\$18,500,000
Grocery	\$ 2,500,000
Less: 2004 Base Value	<u>(\$1,290,000)</u>
Est. Incremental Value	\$19,710,000

City's Value Growth Schedule

2004	\$ 1,010,000	(Increase due to \$2.3 M Land Sale)
2005	\$ 4,700,000	
2006	\$ 7,000,000	
2007	<u>\$ 7,000,000</u>	
Total Incremental Value	\$19,710,000	

On January 5, 2005 Monroe Neighbors countered in a letter to the City that the value growth schedule should be accelerated based upon the completion percentage of construction rather than value generated by sales, as follows:

Monroe Neighbors' Value Growth Schedule

2004	\$ 1,010,000	(Increase due to \$2.3 M land sale)
2005	\$13,838,000	(74% complete)
2006	<u>\$ 4,862,000</u>	(26% complete)
Total Incremental Value	\$19,710,000	

The effect of accelerating the timing of value growth increased the supportable TIF at 50% to \$2,149,000. A \$2,322,000 TIF loan would thereby be about 54% of the TIF, still requiring a TIF Policy exception.

On February 3, 2005 Monroe Neighbors asserted that the project value should increase by about \$1.9 million, assuming a higher value for the grocery and condominium parking. The effect of such an assertion would be that the TIF Loan would fall within the 50% Rule limit. The City Assessor's office reviewed the project data and approximated the incremental value at \$21,629,000, as follows:

Final Value Estimates

Condominiums	\$19,719,000
Parking	\$ 1,800,000
Grocery(14,000 SF gross)	<u>\$ 1,400,000</u>
Total Estimated Value	\$22,919,000
Less: Base Value	<u>(\$1,290,000)</u>
Incremental Value	\$21,629,000

Final Value Growth Schedule

2004	\$ 1,010,000
2005	\$13,838,000
2006	<u>\$ 6,781,000</u>
Total Incremental Value	\$21,629,000

Monroe Neighbors agreed to guaranty the higher value and more aggressive value growth schedule via the required tax increment guaranty. Both sides agreeing, a TIF funding resolution, RES-05-00237, was introduced to the Common Council on February 17, 2005 and adopted on March 15, 2005.

TIF Loan Documentation

In August of 2005, the City made a tax incremental financing loan in the amount of \$2,322,000 (the "2005 TIF Loan") to Monroe Neighbors, LLC to partially finance Monroe Neighbor's redevelopment of the property located at 1802-1864 Monroe Street. The property is located in Tax Increment Finance District No. 33, which was created for the purpose of eliminating blight and stimulating new development on a one block area that included a vacant grocery store and a small surface parking lot owned by the City and operated by the Parking

Utility.

At closing in August of 2005, Monroe Neighbors executed a TIF Loan Agreement under which it agreed to construct a grocery store, 129 parking stalls, and 52 units of owner-occupied residential condominium units on the property. Monroe Neighbors also executed a second mortgage and note in favor of the City in the amount of the 2005 TIF Loan. The mortgage encumbered all of the residential condominium units and the grocery unit. Five individual principals of Monroe Neighbors provided personal guaranties to the City, guaranteeing all of the obligations of Monroe Neighbors under the terms of the TIF Loan Agreement, note and mortgage.

The City also received a second mortgage in the amount of the 2005 TIF Loan from MC Commercial, LLC, which owns the grocery store unit. The mortgage by MC Commercial secures compliance by Monroe Neighbors with the terms and conditions of the TIF Loan Agreement, mortgage and note. At the time of closing, MC Commercial and Monroe Neighbors were controlled by the same individuals.

In 2007, the City provided a supplemental TIF Loan to Monroe Neighbors in the amount of \$195,000 (the "2007 TIF Loan") for the purpose of constructing a public plaza on the easterly edge of the property. Monroe Neighbors executed a TIF Loan Agreement, a mortgage and a note in favor of the City in the amount of the 2007 TIF Loan. The 2007 mortgage encumbered the twenty-eight residential units that were unsold at the time. As units have sold, the City has executed partial releases of those units from both the 2005 mortgage and the 2007 mortgage. To date, 42 of the residential units have sold, and two more unit sales are pending. Only the grocery unit and the eleven remaining unsold residential units are subject to the City's three subordinated mortgages.

Increment Guaranty

The 2005 and the 2007 TIF Loan Agreements require Monroe Neighbors to guaranty that the project would generate a specified amount of tax increment for the years 2006 through 2012 and 2007 through 2012 respectively. Attached hereto is a spreadsheet prepared by the City Comptroller detailing the tax increments guaranteed under each Loan Agreement, the total guaranty, the tax increment actually generated to date, and the amounts of excess or deficient increment to date.

Each TIF Loan Agreement provides that if the project does not generate the required amount of increment in any year, Monroe Neighbors is to pay to the City the amount of such deficiency by August of the following year. Excess increment, meaning tax increment received in excess of the amount guaranteed, was carried over as a credit to Monroe Neighbors to be used in any succeeding year in which the increment fell short.

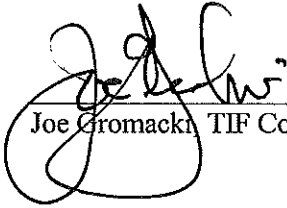
In tax year 2007, the project had an increment shortfall of \$6,692. Monroe Neighbors was notified of the deficiency, and made payment to the City to cover the shortfall. In tax year 2008, the project had an increment shortfall of \$182,727, and the City sent several notices to Monroe Neighbors demanding payment. To date, none of the 2008 increment shortfall has been paid. The projected increment shortfall for tax year 2009, which will be due in August of 2010, is approximately \$140,000.

Remedies

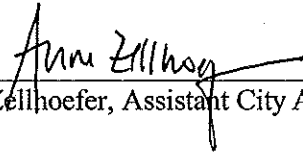
Monroe Neighbors' failure to pay the City pursuant to the increment guaranty is a default under the TIF Loan Agreements, the mortgages and the notes. The City's options under the loan documentation are to attempt to collect the outstanding balance by suing the individual guarantors, by suing Monroe Neighbors for amounts owed pursuant to the notes, or by bringing an action against Monroe Neighbors or MC Commercial to foreclose on any of the unsold residential units or the grocery unit. The City's three mortgages are all subordinated to several mortgages held by First Business Bank. Staff has requested information on the outstanding Bank loan balances, but Bank representatives have declined to provide it, citing confidentiality

reasons. As a junior lender, the City would be required to pay off any loan balance owed the Bank if the City foreclosed on a unit or units.

Staffs from the Office of the City Attorney and the Comptroller have met with a representative of Monroe Neighbors multiple times over the past year in an attempt to resolve the matter. To date, no resolution has been reached and the amount owed to the City remains outstanding.



Joe Gromacki, TIF Coordinator



Anne Zellhoefer, Assistant City Attorney

**Monroe Commons TIF Guarantee
9/20/09 Calculation**

Tax Year	Property Value	Incremental Value	Tax Rate	Tax Increment	2005 Agreement Exhibit D Guarantee	2007 Agreement Exhibit B Guarantee	Total Guarantee	Annual Excess (Deficient) Increment	Cumulative Excess Carried Forward	Payment Due	Due Date
2004	1,290,000	-	n/a	n/a	-	-	-	-	-	-	-
2005	2,300,000	1,010,000	0.0207845	20,992.35	-	-	-	20,992.35	-	-	-
2006	4,572,000	3,282,000	0.0197020	64,661.96	22,612.00	-	22,612.00	42,049.96	20,992.35	-	-
2007	15,660,900	14,370,900	0.0196462	282,333.58	319,568.00	32,500.00	352,068.00	(69,734.42)	63,042.31	6,692.12	8/1/2008
2008	17,347,900	16,057,900	0.0194683	312,620.01	462,848.00	32,500.00	495,348.00	(182,727.99)	-	182,727.99	8/1/2009
2009	18,617,400	17,327,400	0.0205704	356,431.55	463,730.00	32,500.00	496,230.00	(139,798.45)	-	139,798.45	8/1/2010
2010					464,601.00	32,500.00	497,101.00		-	-	8/1/2011
2011					465,464.00	32,500.00	497,964.00		-	-	8/1/2012
2012					466,318.00	32,500.00	498,818.00		-	-	8/1/2013
					2,665,141.00	195,000.00	2,860,141.00				