



Legislation Text

File #: 04890, Version: 1

Fiscal Note

This resolution rescinds a TIF loan agreement with The Alexander Company originally approved in 2005 and would authorize a replacement \$4,274,000 loan to 309 W. Washington, LLC and its assigns ("Developer") for the construction of Phase I of a project to be located in the 300 block (Block 51) of West Washington Avenue, namely a 141-unit condominium project, 10,000 square foot commercial space and 268 parking stalls ("Project"). This loan would be repaid through incremental taxes generated by the Project and represents approximately 52% of the present value of all incremental taxes anticipated from the Project throughout the remaining 21-year life of the TID. This funding level is slightly above the 50% policy established by Common Council and would require a Council exception to TIF Policy.

Sufficient funding for this loan was authorized in the 2006 Capital Budget and is included in the proposed 2007 Capital Budget as recommended by the Board of Estimates.

While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 7 years, the Developer is required to guarantee a minimum payment if sufficient future tax increment is not available. The Developer is also obligated to return a 50% share of any surplus net proceeds, upon the receipt of a final audit of the project cost and sales records. The increment guarantee and equity participation payment are secured by a subordinated mortgage on the property.

Title

Rescinding RES-05-00623, File No. 01552 adopted on July 21, 2005 and Authorizing the Mayor and City Clerk to execute a development agreement to fund a \$4,274,000 Tax Incremental Finance Loan to 309 W. Washington, LLC ("Developer") in the development of the first phase of a mixed-use redevelopment project (Capitol West) located in Block 51 of the West Washington Avenue corridor in TID #28 (Bassett).

Body

WHEREAS, the City of Madison has, by adoption on December 14, 2004 of Resolution Number 62,098, ID Number 36,928, amended the boundary and project plan for Tax Incremental District (TID) #28; and

WHEREAS said Project Plan, among other things, provides for planned economic, commercial, housing and mixed-use development in order to maintain the Block 51 area healthy, vibrant element of the West Washington Avenue corridor; and

WHEREAS, on July 21, 2005, the Common Council of the City of Madison adopted RES-05-00623, File No. 01552 authorizing the Mayor and City Clerk to execute a development agreement to fund a \$4,274,000 TIF Loan to the Alexander Co. proposing to construct 159 condominium units in the first phase including 18 Inclusionary Zoning units, 258 parking stalls, 18,000 square feet of saleable residential storage and 10,000 square feet of commercial at an estimated total development cost of approximately \$47,170,000 in Block 51 of West Washington Avenue ("Initial Project"); and

WHEREAS, the Initial Project was comprised of several construction components, namely the 309 West Washington, Capitol Court Condominiums, Broom Street and Main Street town homes; and

WHEREAS, on September 19, 2006 the Common Council adopted zoning ordinance ORD-06-00131, File No. 04209, approving a GDP/SIP for an amended project; and

WHEREAS, in view of the material changes adopted in the GDP/SIP, Developer submitted an amended TIF Application dated September 26, 2006 that comprises the following ("Amended Project"):

- 1) Changed the name of the Developer from The Alexander Co., Inc. to 309 W. Washington, LLC
- 2) Increased the number of units in the 309 West Washington and Capitol Court components from 127 to 141

condominium units

- 3) Increased the parking from 258 to 268 parking stalls
- 4) Reduced the saleable residential storage space from 18,000 to 10,500 SF
- 5) Reduced the number of Inclusionary Zoning units in the 309 West Washington component from 18 to 16 (2 additional units are committed in the Main Street and Broom Street town homes)
- 6) 10,000 square feet of commercial in the first phase (same as Initial Project)
- 7) Increased total estimated total cost from \$47,170,000 to \$51,307,000; and

WHEREAS, the estimated of the 309 West Washington and Capitol Court elements would be sufficient, all things remaining constant, to generate sufficient tax increments to repay the TIF Loan, rendering the inclusion of the Main Street and Broom Street components in the Amended Project unnecessary; and

WHEREAS, Developer shall guaranty that tax increments of the Amended Project shall be sufficient to repay the TIF Loan; and

WHEREAS Developer shall insure the payment of Prevailing Wage on all components of the Amended Project, and also on the Main Street and Broom Street town home components; and

WHEREAS, after review of the amended TIF Application, staff concluded that \$3,240,000 of the \$4,274,000 gap was attributable to demolition and remediation, underground parking construction, purchase of existing structured parking and commercial construction in the 309 West Washington project element and \$1,034,000 of gap attributable to construction and sale of 16 Inclusionary Zoning Units in the Amended Project; and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Amended Project and has determined the gap to be \$4,274,000 and that, but for TIF assistance, the Amended Project could not occur; and

WHEREAS, in conformance to TIF Policy, \$4,274,000 of said TIF assistance represents approximately 52% of the present value of the estimated tax incremental revenues generated by the Amended Project; and

WHEREAS, for the purpose of promoting market and affordable owner-occupied housing, the City finds it necessary and appropriate to make an exception to TIF Policy 4(e) that no more than 50% of the net present value of the tax increment generated by a private development project shall be made available to that project as gap financing; and

WHEREAS, \$3,274,000 of the loan becomes a grant when the Developer sells 71 residential condominium units to owner-occupants by July 15, 2008 and the \$1,000,000 of the loan becomes a grant when Developer sells an additional 53 residential condominium units in the Amended Project by March 15, 2009; and

WHEREAS, in addition to any other powers conferred by law, the City may exercise any power necessary and convenient to carry out the purpose of the TIF law, including the power to cause project plans to be prepared, to approve such plans, and to implement the provisions that effectuate the purpose of such plans; and

WHEREAS, funding of the loan proceeds to this project was authorized in the 2006 Capital Budget; and

NOW, THEREFORE, BE IT RESOLVED that the City hereby finds and determines that the Amended Project is consistent with the public purposes, plans and objectives set forth in the TID #28 Project Plan and the subsequent amendment to the Project Plan and boundary adopted on December 14, 2004 and that the City's loan to 309 W. Washington, LLC will stimulate redevelopment in TID #28, thereby making more likely an accomplishment of the public purpose objectives set forth in the Project Plan and its amendment, the TIF Law and City TIF Policy.

BE IT FURTHER RESOLVED that funding is subject to the following conditions:

1. The Amended Project. Developer agrees to develop or cause to develop:

- a. 141 residential condominium units in the 309 West Washington and Capitol Court components of the Project.
 - b. No less than 16 residential condominium units made affordable to households at a stipulated percentage of Dane County Median Income (DCMI) as set forth and executed in an Inclusionary Zoning agreement.
 - c. Approximately 10,000 gross square feet of ground-level commercial space.
 - d. 10,500 square feet of residential storage space.
 - e. No fewer than 268 parking stalls at an estimated cost of \$4,530,000-including an estimated 216 underground stalls, 20 surface stalls and 32 stalls to be purchased in the Main Street Parking Ramp owned by Meriter.
2. Form of Assistance. TIF assistance shall be provided in the form of a zero interest (0%) loan ("TIF Loan") at closing from the City to Developer, in the amount of Four Million Two Hundred Seventy Four Thousand Dollars (\$4,274,000) to partially finance Developer's development of the Amended Project. Subject to the IZ unit release prices in Section 10 herein, Three Million Two Hundred Seventy Four Thousand Dollars (\$3,274,000) of said TIF Loan becomes a grant if Developer sells 71 residential condominium units to owner-occupants by July 15, 2008 and the remaining One Million Dollars (\$1,000,000) of said TIF Loan becomes a grant if an additional 53 residential condominium units are sold by March 15, 2009.
3. Pre-Sales Requirement. TIF Loan Funds shall not be disbursed until Developer has demonstrated, in a form acceptable to the City, that the greater of 30% of the condominium units or such other percentage as is required in an executed primary construction lender commitment have been pre-sold.
4. Inclusionary Zoning (IZ) Disbursement, Repayment. TIF Loan funds in the amount of \$1,034,000 are attributable to the sales price write-down of the 16 Inclusionary Zoning (IZ) units. Such amount shall be disbursed to Developer at the TIF Loan closing and will be subject to repayment on a pro rata basis, (\$64,625 per IZ unit) for each IZ unit that is sold as a market unit.
5. Default and Remedy. Should Developer default under any terms of the TIF Loan Agreement ("Development Agreement") the City may exercise all rights and remedies in the Development Agreement and mortgage, including but not limited to foreclosure.
6. Method of Payment. The City's expenditure in providing the TIF Loan shall be repaid by Developer through tax increments generated by the Amended Project and/or cash payments by Developer. Developer shall guaranty the City's receipt of increment revenue.
7. Subordinated Developer Loan Developer has loaned the Amended Project approximately \$2,100,000 ("Developer Loan") and shall subordinate Developer Loan to the TIF Loan.
8. Security. The proceeds of the TIF Loan shall be disbursed to the Developer at closing. The TIF Loan shall be evidenced by a Note to the City of Madison bearing 0% interest. Developer shall execute a second mortgage in favor of the City of Madison and an individual principal of the Developer shall execute a personal guaranty.
9. Equity Participation Payment. In the event that the aggregate of actual net unit sales (i.e. gross sales prices less the costs of sale and customary tax and other prorations as shown on the closing statement from each sale) ("Net Sales Proceeds"), as adjusted below, exceeds 100% of the projected sales prices, as adjusted for the cost of sale and closing costs estimated at 5.5% plus the \$2,100,000 subordinated loan to Project from Developer ("Profit Sharing Threshold"), the Developer agrees to return to the City fifty percent (50%) of the Net Sales Proceeds over and above the Profit Sharing Threshold. Additional costs incurred, in the aggregate, over and above the estimated project costs identified in the TIF Application shall be deducted from Net Sales Proceeds prior to applying the Profit Sharing Threshold for the purpose of determining Shared Profits. In the event there is an aggregate project cost savings from the estimated project costs identified in the TIF Application, said aggregate cost savings shall be added to the Net Sales Proceeds prior to applying the Profit Sharing Threshold for the purpose of determining Shared Profits. The Shared Profits shall be paid to the City at or prior to the closing of the sale of the last remaining unit sold by the Developer.

In the event that an officer, employee or member of Developer, or a Familial Affiliate of an officer, employee or

member of Developer (as defined below), purchases a unit from Developer at a gross sales price that is less than the projected sales price for that unit as designated in the TIF Application, then the projected sales price rather than the actual sales price for each unit shall be used when calculating Shared Profits under this section. Familial Affiliate of an officer, employee or member of Developer shall mean an officer, employee or member's spouse, children, parents or siblings.

10. Satisfaction. The Mortgage shall be satisfied and the Note cancelled upon full payment of the TIF Loan and Equity Participation Payment and full compliance with the Inclusionary Zoning requirements. For non-IZ units, the City shall execute partial releases for no consideration for individual units at the request of Developer prior to or simultaneously with the closing of each unit. For each of the sixteen (16) IZ units, the City shall execute a partial release if either:
 - i. The IZ unit is sold as an IZ unit to a qualified buyer; or
 - ii. Payment is made to the City of \$64,625 per unit.
11. Affirmative Action (MGO 3.58 (a)). Developer and its contractors/subcontractors must comply with all applicable provisions of the Madison General Ordinance (MGO) 3.58 (a), concerning contract compliance requirements. Prior to commencing construction, Developer shall contact the City's Affirmative Action Department to assure that Developer is in compliance with the aforementioned requirements. Developer shall assist and actively cooperate with the Affirmative Action Department in obtaining the compliance of contractors and subcontractors with such applicable provisions of the Madison General Ordinance. Developer shall allow maximum feasible opportunity to minority/disadvantaged women business enterprises to compete for any contracts entered into pursuant to the contract.
12. Prevailing and Living Wage (MGO 4.20 & 4.23). Developer agrees to comply with Madison General Ordinances 4.20 and 4.23 that require Developer to provide a living wage and a prevailing wage. Developer shall insure the payment of Prevailing Wage on all components constructed in Phase I, including the Main Street and Broom Street condominiums.
13. Accessibility (MGO 3.72). Developer agrees to meet applicable accessibility accommodations for the Amended Project as required by Madison General Ordinance 3.72.
14. Equal Opportunity and Fair Housing. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity and Fair Housing.
15. Material Changes. Any material changes to the size or use of the Amended Project, as stated in the amended TIF Application dated September 26, 2006 and its attachments and amendments submitted to the City as of the date of introduction of a resolution to the Common Council to approve this TIF Loan, will subject this TIF Loan commitment to reconsideration by the City, or if the loan has been made to immediate repayment of the TIF Loan by Developer.
16. Project Completion. Developer must guarantee that the construction of the Amended Project will be completed by December 31, 2008.
17. Property Insurance. Prior to funding, evidence must be provided that a property insurance policy of the proper type and amount of coverage to protect the City's participation has been obtained. The policy shall name the City of Madison as an additional insured.
18. Title Insurance. At funding, Developer must provide a commitment for a title insurance policy of the proper type and amount of coverage to the City. The City shall receive a lender's policy.
19. Environmental Assessment. Developer shall provide the City an environmental assessment of the site which is acceptable to staff.
20. Land Use Approval Contingency. The terms and conditions of this TIF assistance are contingent upon approval and recording of the GDP/SIP for Phase I of the Amended Project as described in the amended TIF Application dated September 26, 2006.

BE IT STILL FURTHER RESOLVED that the City, at its sole discretion, finds it necessary and appropriate to make exception to City of Madison TIF Policy 4(e) that no more than 50% of the net present value of the tax increment generated by a private development project shall be made available to that project as gap financing; and

BE IT STILL FURTHER RESOLVED that the TIF Loan to the Developer is hereby approved and that the Mayor and City Clerk are hereby authorized to execute a development agreement and other documents as may be necessary to effectuate the transaction, all of which are subject to the approval of the City Attorney.

BE IT STILL FURTHER RESOLVED that RES-05-00623 is hereby rescinded.