

CITY OF MILWAUKEE

Form CA-43

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January 16, 2004

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Alderman Michael J. Murphy
16th Aldermanic District
Room 205 – City Hall

Re: Common Council File No. 031050, Substitute 4

Dear Alderman Murphy:

In your January 13, 2004 communication, you asked several questions concerning Substitute 4 to the ordinance contained in the above-captioned Common Council file. Your first question was: "This ordinance attaches requirements to developers and developments that receive 'direct financial assistance' from the City of Milwaukee. As currently defined by the ordinance, would money derived from a Tax Incremental Financing (TIF) district be considered 'direct financial assistance?'"

Funds derived from tax incremental financing and provided directly to developers through development agreements (note: TIF funds generally benefiting a tax increment district would not be included) would be considered in computing whether or not the "direct financial assistance" requirements of the proposed sec. 308-91-2-b had been met. The Tax Increment Law, found in sec. 66.1105, Stats., is simply a method of generating City funds to pay for qualifying "project costs," as defined in sec. 66.1105(2)(f), Stats. Items qualifying as "project costs" include most traditional development related costs.

Your second question was: "Under the definition of 'direct financial assistance,' the ordinance indicates that this term includes 'the cash value of below-market sales (as well as) any direct subsidies to developers . . .' In the law, is there any clear standard for what constitutes a 'below market sale?' If a developer were, for example, to purchase a property for its assessed value, is that a defensible 'market sale?'"

Municipal tax assessors are statutorily mandated to value real property at its "market value." That mandate is expressed in sec. 70.32(1), Stats., as follows:

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“Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03(2a) from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale. In determining the value, the assessor shall consider recent arm’s-length sales of the property to be assessed if according to professionally acceptable appraisal practices those sales conform to recent arm’s-length sales of reasonably comparable property; recent arm’s-length sales of reasonably comparable property; and all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.”

The term “full value” as used in sec. 70.32(1) “. . . is synonymous with ‘fair market value’” *ABKA Limited Partnership v. Board of Review of the Village of Fontana-on-Geneva Lake*, 231 Wis. 2d 328 at 339 (1999).

Therefore, it is our opinion that it would be defensible to use the current assessed value (assuming that the property is not exempt and therefore has not been assessed) to determine the market value of property for purposes of determining “below market sales” under the proposed sec. 308-91-2-b. If there is no assessed value, the property may have to be appraised as a part of the City/Redevelopment Authority sale process.


Your final question was: “This ordinance requires that all property owned by either the City or the Redevelopment Authority of the City of Milwaukee, and which is developed as residential property, be subject to certain affordable housing requirements. In the view of your office, is it sufficiently clear that these requirements apply only to residential development? Put another way, is it sufficiently clear that a commercial venture developed on these properties would not be subject to these requirements?”

It is our opinion that the affordable housing provisions of the proposed sec. 308-91-8 clearly apply only to City or Redevelopment Authority owned property “which is developed as residential property.” This limitation applies both to the principal requirement to “set aside 20%

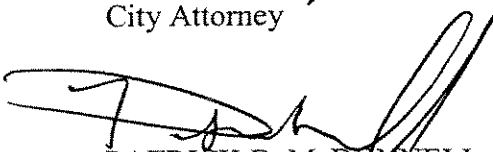
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of the housing units developed as affordable housing" found in the proposed sec. 308-91-8-a and to the alternate requirement to contribute "10% of the market value of the land" found in the proposed sec. 308-91-8-b.

Very truly yours,



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