

CITY OF MILWAUKEE

Form CA-43

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January 21, 2004

Mr. W. Martin Morics
Comptroller
Room 404 – City Hall

Re: Estimated Tax Incremental District Expenditures

Dear Mr. Morics:

In a January 16, 2004 e-mail from Mr. Li of your office, we were forwarded a draft procedure that the Department of City Development, the Budget Office and the Common Council's Fiscal Section have agreed upon in order to release funds for a particular Tax Incremental District ("TID") that are in excess of the estimated project cost in the Project Plan for that district.

As you know, we have opined: "... that the alterations in those elements of the project plan, which sec. 66.46(4)(f) [now, sec. 66.1105(4)(f)] permits to be cast in terms of 'estimates' and which were in fact characterized as 'estimated' in the TID 5 project plan, do not constitute amendments to the project plan." 85 O.C.A. 361. We came to the same conclusion in a February 6, 1989 opinion, stating:

"Therefore, an increase in the already specified estimated project cost does not, in our opinion, constitute an 'additional project cost' within the meaning of sec. 66.46(5)(c) [now, sec. 66.1105(5)(c)], Stats.; and such an expenditure could be incurred without amending the project plan. This conclusion presumes that the expenditure can be made within the initial five-year period, and that there are sufficient TID-7 funds available to fund the expenditure."

89 O.C.A. 71.

Mr. W. Martin Morics
January 21, 2004
Page 2

We made the following suggestion in our 1985 opinion:

“While we have concluded that alterations of estimated project costs and methods of financing those costs do not constitute an amendment to a TID project plan, we would suggest that members of the City Plan Commission, the Common Council and the Joint Board of Review be apprised, on an informational basis, of the financing modifications for TID 5.”

We again addressed the estimated TID project cost issue in an April 30, 1990 opinion to your predecessor. In that opinion, we observed:

“Your question focuses on the desirability of imposing a cap on the estimated project costs. The cap could either be on individual project costs or, as you suggest, on the overall project cost total. With such a cap in place, any increase beyond that ceiling would require a formal project plan amendment. Section 66.46(4)(h) and (4)(m), [now, sec. 66.1105(4)(h) and (4)(m)] Stats. There may also have to be a redetermination of the tax incremental base if the amendment would permit project cost expenditures beyond the initial five year period. Section 66.46(5)(c), [now, sec. 66.1105(5)(c)] Stats.

“The issue of imposing such a cap involves more policy, rather than legal, considerations. However, we believe that placing such an upper limit on TID expenditures would provide more clarity to the otherwise definitionally murky situation which is presented by ‘estimated project costs.’ The ultimate decision on the advisability of imposing such expenditure limitations must be left to the Common Council and the Joint Review Board.”

90 O.C.A. 290.

The eight step procedure forwarded under Mr. Li's e-mail* does not precisely embrace either our 1985 or 1990 suggestions on how to deal with the issue of exceeding estimated TID project costs. We recognized in both opinions that the method, if any, for addressing that issue

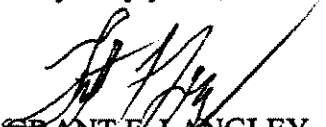
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- *1. DCD determines that in order to complete TID Approved Planned Activity which exceeds the original Common Council approved estimated TID expenditures, an additional appropriation is required.
 2. DCD verifies that there is sufficient annual TID budget authority to allocate an additional appropriation to a specific approved TID plan.
 3. DCD verifies that there will be sufficient increments collected to cover the additional appropriation.
 4. DCD meets with the Budget Office and the Common Council-Fiscal Division to inform both parties of the required appropriation request.
 5. DCD provides a confirming E-Mail to the Budget Office and Common Council-Fiscal Section.
 6. The Budget Office and Common Council-Fiscal Section forward their approval to the Comptroller's Office.
 7. DCD request release of funds based on their approval.
 8. Annually, DCD submits to the Common Council an annual report of each TID status.

Mr. W. Martin Morics
January 21, 2004
Page 3

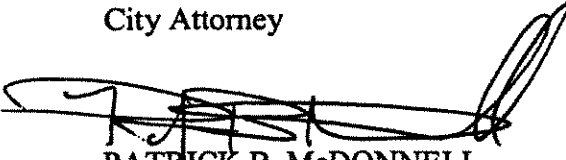
"involves more policy, rather than legal, considerations." However, we note, as we did in our 1989 opinion, that any procedure for dealing with expenditures in excess of the Project Plan estimates must at a minimum be predicated upon the availability of funds in the annual City Budget. Point No. 2 of the proposal at issue addresses this concern. Therefore, since that procedure at issue addresses the minimum requirement for any such policy, we are of the opinion that the eight step process that Mr. Li has outlined is reasonable and legally defensible.

Finally, it may be advisable to provide the Common Council with an outline of this process on at least an informational basis since, under the proposal, the Council is not advised of expenditures in excess of TID estimates until after the fact.

Very truly yours,



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