

KENTUCKY PRIVATE ACTIVITY BOND ALLOCATION COMMITTEE
MINUTES
December 18, 2007

The Kentucky Private Activity Bond Allocation Committee (the "Committee") meeting was called to order by Chairman Lori Flanery, proxy for Jonathan Miller, Secretary, Finance and Administration Cabinet, on Tuesday, December 18, 2007 at 10:00 a.m. in Room 386 of the Capitol Annex, Frankfort, Kentucky. Other members present were: Katie Smith, proxy for John Hindman, Secretary, Cabinet for Economic Development; Mary Lassiter, State Budget Director; and Edgar C. Ross, Controller, Finance and Administration Cabinet.

Chairman Flanery declared that a quorum was present and verified that the press had been notified of the meeting.

The first item on the agenda was the approval of the March 6, 2007 minutes. A motion was made by Mr. Edgar Ross and the motion was seconded by Ms. Katie Smith to approve the minutes. **Motion CARRIED.**

Mr. Ramsey stated under Attachment A you will find two applications from Kentucky Housing Corporation ("KHC"). The first application is requesting \$1,258 and the second application is requesting \$4,000,000.70, for a total request from KHC for \$4,001,258.70. Mr. Ramsey stated that KHC is requesting as applicable carryforward allocation into 2008. He also indicated that KHC has requested that the Committee allow them to use this allocation during the remainder of calendar year 2007. Mr. Ramsey stated that staff recommends approval. Mr. Howard added that administrative regulations require that any unused cap be allocated as carryforward after December 15th. Mr. Howard stated that in this case KHC has a multi-family deal that was not able to close before the December 15th deadline, but will be closing on December 21, 2007. He indicated that from a technical perspective this is not labeled as carryforward for federal tax purposes.

Ms. Lassiter asked if allowing KHC to use the funds after the deadline would be against the regulation. Mr. Howard stated that it is not in conflict with the regulation and the Committee has the ability to and has done so in years past. Ms. Lassiter asked if there were any other requests for allocation. Mr. Howard indicated that KHC was the only applicant.

Ms. Lassiter made a motion to approve allocation of carryforward in the amount of \$4,001,258.70 to KHC and was seconded by Mr. Ross. **Motion CARRIED.**

Mr. Ramsey stated that Attachment B is the 2007 volume cap summary, which is an informational item. Mr. Ramsey indicated that the total volume cap for 2007 was \$357,516,290. Mr. Ramsey stated that the per capita amount remains at \$85. He indicated that the volume cap for 2007 was \$23,643,890 more than in 2006. Mr. Ramsey stated that he is expecting the U.S. Census Bureau to provide their demographics by the end of December or early January. Once staff gets the Census report then staff would accept applications for 2008 allocation as well as setting deadlines for when the cap allocation is awarded.

Chairman Flanery stated there is no action needed for Attachment B. Mr. Ramsey stated the next item was the public hearing and approval for the City of Crescent Springs-Bear Creek Capital, LLC located under Attachment C.

Mr. Ramsey stated that approval for the project by the Committee is required pursuant to KRS 103.2101 to obtain approval from the Committee. The projects must answer these questions as well as meet the following criteria: show economic need for the project; does the project place an unjustified competitive disadvantage on existing businesses in the area; if at all possible is normal commercial financing available; under what terms and at what rates; is the project in accord with KRS 103.200 through KRS 103.285, and lastly the projects economic soundness. Mr. Ramsey stated that this particular project is reapplying after all objections have been satisfied. Mr. Howard stated that because of the appellate court ruling this meeting would have to be considered a 13(B) hearing per say for purposes of the approval of said project today.

Mr. Richard Spoor, Keating, Muething & Klekamp, Cincinnati, Ohio stated he was bond counsel for the project and was also bond counsel for the issue when it first was presented to the Committee back in 2003. Mr. Spoor stated he would like to take a moment and review the history because it is relevant here. He stated that this would be the last bond issue that this Committee would have come before them. In 2006 the law changed and now the State Local Government Finance Officer will be reviewing and approving bond issues. Mr. Spoor indicated this particular project must come back before this Committee due to a provision in the revised statute. The provision states that anything under way as of February 1, 2006 would still need to be considered by the KPABAC Committee. He indicated this project was the same now as it was in 2003 when the project was first presented and approved by the Committee. Mr. Spoor stated that once a project is approved by the Committee then the city or county, whoever the applicant happens to be has the authority to issue the bonds. Mr. Spoor indicated in August 2004 the city of Crescent Springs (the "City") issued bonds for this project. Mr. Spoor stated that Mathew Tobin, a developer in Northern Kentucky, filed a lawsuit against the project and KPABAC. The lawsuit claimed the action of this Committee was not taken on a rational basis because there was not enough evidence produced to allow approval for the Bear Creek project. Mr. Spoor stated that caused the project to go in flux because without approval of this Committee, the City does not have the power to issue the bonds. The Franklin County trial court ruled that the action of this Committee was arbitrary and capricious; without any basis. Mr. Spoor stated that they had appealed that ruling and the Court of Appeals agreed that the Committee had done everything properly. He stated that the Court of Appeals on its own motion concluded that two notices are required before the Committee can have a hearing instead of the one that is currently in the statute. Mr. Spoor stated that this is a rehearing of the same exact project from the 2003 meeting but this time they posted two notices instead of the one.

Mr. Spoor stated the project is the same but it has progressed. The project is a large shopping center complex located in the downtown redevelopment district of Crescent Springs. In 2003 it was a trailer park that was a topographically challenged area. He stated the cost of preparing the site was extraordinary, both in topographical engineering and also moving earth to level out the land. Another obstacle was interior and exterior roads as well

as relocating all the residents of the trailer park and giving them compensation. Mr. Spoor stated that bonds had been issued once before and the project hoped to issue industrial revenue bonds once again. These bonds are subject to federal income tax. He pointed out that in fact a number of years ago a project was approved for Matthew Tobin, the plaintiff in the lawsuit. He stated that prior to 1986, the projects were exempt from federal income tax and the Committee financed numerous shopping centers and office buildings. He stated in 1986 the tax law changed and after that took place you can only do tax free bonds for manufacturing projects. Mr. Spoor pointed out most of the projects after the tax laws changed have been manufacturing facilities. Mr. Spoor stated if the City owned the property during the term of the bonds and leased it to the developer then the property is exempt from ad valorem taxation. He stated that is the incentive from local government to do the respective projects. He stated when Mr. Tobin filed the lawsuit, he involuntarily joined the library district and the school district. The school and library districts were brought in as third party plaintiffs. One of the arguments in the case is there were no provisions for payment in lieu of taxes (PILOT) to the school and library districts. Mr. Spoor stated the way the statute was written originally mentions nothing about having a PILOT agreement. He indicated that many communities do negotiate a PILOT agreement on their own. Mr. Spoor stated that part of the arguments in this court case regarding the project were that the City did not require payments to be made to the other districts and the developer did not have PILOT agreements in place. Mr. Spoor stated that they have reached a PILOT agreement with the school and library district. He indicated they also got an approval letter from Kenton County Judge Executive Ralph Drees. Mr. Spoor stated that just yesterday there was an agreement met with Mr. Tobin regarding the city of Crescent Springs project. The agreement says that Mr. Tobin will not oppose the project from here on out. He indicated the settlement agreement with Mr. Tobin as well as the PILOT agreement are contingent upon the Crescent Springs project receiving approval today from the Committee. Mr. Spoor indicated the materials presented to the Committee are as if the Committee was under the new statute, when in fact the Crescent Springs project is being treated as if still under the old statute. Mr. Spoor stated there is a PILOT agreement, an approval letter from the County Judge Executive, and a market and feasibility study. Mr. Spoor turned the floor over to Greg Scheper with Bear Creek Capital.

Mr. Scheper stated that Bear Creek approached the City in 2003 with regard to the property. The property is located at the Buttermilk Pike exit. He indicated that the property was expensive due to the number of parcels needed and as the mobile home park was creating a lot of cash flow for the owners. Mr. Scheper stated that the owner of the mobile home park was not maintaining it properly and the mobile home park was somewhat notorious for creating problems for law enforcement. In addition there were significant improvements needed to Beechwood and Anderson Road to help with traffic flow. Another obstacle was the railroad track that runs under Buttermilk Pike. The developer worked with the Transit Authority of Northern Kentucky and after negotiations decided to construct a bridge over the railroad track to alleviate traffic conditions. Mr. Scheper stated that minus the development costs associated with developing this property, the City realized this was a prime piece of property. He indicated that in years past, several businesses had considered this property but no one was interested due to the economics needed to make the property work. Mr. Scheper stated that Bear Creek Capital approached the City to facilitate a way to

achieve the proposed project. Industrial Revenue Bonds were a means to achieving the project. He stated the ad valorem taxes that would be abated would be invested back in the infrastructure. The project required 600,000 cubic yards of dirt to level out the land. Currently there is a Home Depot and Remke Market anchoring this site. Ashley Furniture and National City Bank are also tenants as well as other shops that serve the local community. Mr. Scheper stated that LA Fitness would also be moving soon to the shopping center. Mr. Scheper stated that over the last three years certain tenants require a large capital investment on behalf of the developer. He indicated it was not a risk that the developer could take with the uncertainty of project approval and the opposition as well. Mr. Scheper stated that three years into the project there is a need to convert to permanent financing quickly. Mr. Scheper turned the meeting over to his colleague Steven Kelly.

Mr. Kelly stated he would like to pass around an aerial photo of the property as it is now for the Committee members to review. Mr. Kelly indicated the first time the project was presented to the Committee it was still a mobile home park with a lot of things that needed to be accomplished. There have been road improvements on Beechwood and Anderson Roads and traffic signals and lane widening were needed as well. He stated that the earthwork was one of the major infrastructure costs of this project. One of the things that was needed and required for the project was a fifty foot elevation change from the mobile home park to the commercial redevelopment. He indicated that retaining walls were sizeable along with a lot of relocation of old fatigued infrastructure. Mr. Kelly stated what presently exists is a circulation road through the project. All these updates have made a huge impact but there is more work to be done. The outlots that are shown on development plan B are nice eat-in type restaurants. Mr. Kelly stated between \$7 and \$12 million dollars of additional hard costs are needed for the site and due to the unique site development along with additional infrastructure and amenities such as the enhanced building facades that were agreed to with the City. Mr. Kelly turned the meeting over to Mr. Aaron Valdez.

Mr. Valdez, C. H. Johnson Consulting, LLC, stated his firm was hired to do a third party analysis of the site and most importantly an economic and fiscal impact. Mr. Valdez indicated the study was to determine what kinds of effects this project would have on the local economy on a tax basis and also increases in total earnings. In order to do that the firm used a multiplier effect to see what the ripple would be with all the construction taking place as well as to the local residents around the area. He stated that it was divided into four key sections, indirect spending, induced spending, increased earnings and increased employment. Mr. Valdez stated that these are the four most appropriate areas that would determine how well a project is invested in an area. He indicated that in doing this the firm had to determine a multiplier factor, which is basically seeing how to value those different pieces. Mr. Valdez asked everyone to take a look at Section 2, Page 2 of the report (Attachment D) to see a breakdown of each one. He also pointed out the actual multiplier rates that were used in table 2-1. These rates were actually derived from a Minnesota based company called IMPLAN. He stated that IMPLAN does economic impact studies. Mr. Valdez stated that his firm has had 3 projects from 2002 through 2006 that were located in Kentucky. These projects are Fourth Street Live in Louisville, the Kentucky Horse Park Hotel in Lexington, and a large expansion of a restaurant in Northern Kentucky. He stated, taking all these projects into account as well as using IMPLAN, they were able to determine the multipliers.

Mr. Valdez stated that on the construction of the project alone you can see some of the benefits the City and local economy will receive. They anticipate the project will generate a total of \$11.8 million of indirect and induced spending, \$10.9 million of increased earnings and 275 full-time jobs for the local economy. He indicated the actual construction project itself will add 1,020 jobs and \$25.8 million of wages and salaries. A one-time fiscal impact from construction is estimated to amount to \$1.8 million of state and city tax revenues. Mr. Valdez stated that analysis will be done of a completed project once the project is up and running and all 3 phases are completed. The Buttermilk Towne Center is estimated to generate annual economic impact that includes \$123.6 million of direct spending, \$93.5 million of indirect and induced spending, \$86.3 million of increased earnings and 2,170 full-time equivalent jobs to the local economy annually.

Mr. Valdez stated there was also an analysis of new dollars and \$49.5 million of direct spending is “new dollars” to the Commonwealth, which in turn generates \$37.4 million of indirect and induced spending, \$34.5 million of increased earnings, and 868 full-time jobs.

Ms. Lassiter asked what percent of the spending is estimated to be cross border spending versus in state spending. Mr. Valdez stated that percentage would be forty percent.

Mr. Valdez stated that more importantly are the annual fiscal benefits which are estimated to generate around \$8.8 million of tax revenues annually. Mr. Valdez stated that the real estate tax abatement requested is \$697,100.

Ms. Lassiter asked if the analysis completed by C.H. Johnson Consulting, Inc. is based on 100% completion, where is the project build out now and what is the timeline for full completion after today. Mr. Scheper stated the project had originally had seven outlots and presently two of those are complete. Mr. Kelly stated that the project completion is a little bit north of fifty percent right now. Mr. Kelly stated there are still the outlots and approximately 65,000 square feet of retail space is really needed between the LA Fitness outlot and that they would like to finish it completely by 2008. Mr. Kelly indicated the site as it is now does not look finished from the interstate with that gap on the corner. Mr. Scheper added once the project is approved by the Committee then the LA Fitness deal can be finalized. Mr. Scheper stated that a local sports bar plans to open in the shopping complex. Mr. Scheper stated that after these are finalized then there will only be four outlots remaining. Mr. Scheper stated that the sports bar requires a substantial investment from the landlord. Mr. Scheper stated that Crescent Springs and Bear Creek were eager to get the project finished.

Ms. Lassiter asked what the outcome was from the 2003 relocation of the mobile home park, was there another mobile home park to replace this one or did the housing market in general absorb that population, what really happened to the landscape of the City before and after.

Mr. Tom Vergamini stated he was on the city council of Crescent Springs and was an attorney by profession, and has been involved in this project since the inception. He indicated that he negotiated the deal on behalf of the City with Bear Creek Capital, LLC. He indicated this property was zoned for its particular use in the late 1980's. This was a large

piece of property, roughly 40 acres, with access to the interstate and through a major interstate intersection. He stated that Buttermilk Pike (Intersection 186) is the main thoroughfare that serves Crescent Springs and Villa Hills and approximately 34,000 cars per day use Buttermilk Pike. He stated that Northern Kentucky is not flat but rather hilly, hard to develop, and land is expensive. Mr. Vergamini stated there is also a railroad running through Crescent Springs. He indicated that a railroad running through the City is having a mountain chain; there are only certain passes you are allowed. He stated that there are two passes; one is the bridge over the interstate (Buttermilk Pike) and the other is a small side road. Mr. Vergamini stated that if a developer comes to your city and the land is zoned for their intended need then there is not a lot you can do. However if they are looking for something specific, you do have some leverage and in our case we were able to negotiate that into what we wanted. Mr. Vergamini stated the first thing Bear Creek wanted was economic incentives. He stated that there was a very favorable PILOT agreement signed from the City's perspective. Mr. Vergamini stated that since the late 1950's the land has always been a trailer park. He stated that the City had 125 residents in the trailer park and the owner of the trailer park did not keep up the infrastructure. He indicated that all the roads were private streets and from the City's perspective were generating less than \$40,000 a year income for the City. He indicated that times had changed in the past 40 years but the land remained a trailer park. Circumstances changed for the owner and he finally decided to sell the property. Mr. Vergamini stated that Bear Creek was the tenant that would be taking over the property but it put the City in an unfavorable light because the City was viewed unfavorably because they were forcing the residents to move out of the trailer park. He stated that this was really a private agreement between the buyer and the seller. Bear Creek offered incentives to the residents of the trailer park to relocate. Mr. Vergamini stated that Bear Creek attempted to locate additional trailer parks that would take the tenants. He stated that each tenant got from \$3,000 and up to relocate. He indicated that the critics that we did have of the project said there would be a traffic nightmare. He stated that now it is surprising to see those critics shopping at this center. He indicated that the shopping center is close to where they live and it is convenient. Mr. Vergamini stated that the City had a vision of what they wanted and the vision had yet to be accomplished because of the lawsuit. Mr. Vergamini stated that numerous folks have asked him when the project would be completed and he told them when the lawsuit is over. He stated that hopefully that is over now. Mr. Vergamini stated that the major difference between now and four years ago is that the project exists. He stated that the City is now generating revenue which they never expected, PILOT payments of \$100,000 a year, insurance premium tax money, payroll taxes and gross receipts taxes as well. More importantly and one of the rationales behind convincing the Department of Transportation to improve Buttermilk Pike; the State is generating sales tax revenue that never existed before. He indicated that when it was a trailer park there were residents of the trailer park using the schools and now this is all commercial so there is no adverse impact on the schools or the library. He indicated it was an economic incentive to develop an area which for a long period of time had been targeted as part of a visitor's center. He indicated that Mr. Tobin owns a shopping center across Buttermilk Pike and within one year of this project being built Mr. Tobin's shopping center was totally remodeled and has new tenants. He indicated that there is another property owner of a shopping center in the vicinity that benefited from the railroad bridge. He indicated that at one time there was talk of a direct interstate access but that did not happen so we had to find a way to get traffic from here to

there without going on to a major state highway. Mr. Vergamini stated that there is in place and recorded an easement for this bridge. He indicated that the City negotiated with the railroad to get the bridge in place. He stated that Transit Authority of Northern Kentucky assisted as well as Mr. Kelly and Mr. Scheper to allow the easement here. Mr. Vergamini stated that from the perspective of the City it has been a great economic benefit to us. He stated that the citizens of Villa Hills and Crescent Springs do not have to drive elsewhere now they can do their shopping locally. Mr. Vergamini has tentatively scheduled two meetings because of a required ordinance to approve the bonds once they have been approved by the Committee.

Mr. Ross asked what the tenant reimbursement listed on table 3-2 for \$8 million dollars was. Mr. Valdez asked what page he was referring to. Mr. Ross stated it was found in Section 3, Page 4. Mr. Valdez stated he was not sure exactly what that was referring to and he would get that information for the Committee.

Mr. Spoor stated there are five items required by the statute to be considered when approving projects, one in particular to KRS 103.2101 that need to be addressed in the deliberations. The first one, does it create long term economic growth and or eliminate blithe. He stated those had clearly been demonstrated that there was an economic need for this project. The second item is whether the project places an unjustified competitive disadvantage to existing businesses and it does not. Mr. Spoor stated the rents paid by these tenants are equal to or greater than the rents that are paid by competing businesses. The developer is making a PILOT payment to the schools and the library. He stated that roughly \$10 million of the \$56 million in bonds was used to move the trailers and all the other things that had to be done for this project. He stated that other developers are not in the same or similar situations and did not have to pay for these extraordinary costs. He indicated as the market study points out there is significant new dollars coming in from Ohio that are up to forty percent. Mr. Scheper added that in that immediate submarket of Buttermilk Pike the retail that exists in the older centers and shops are charging \$10 to \$12 dollars per square foot and the Bear Creek project is charging \$18 to \$24 dollars per square foot. Mr. Scheper stated they are not experiencing suppressed square foot rates that would give an advantage over the immediate submarket. Mr. Spoor stated that the neighboring properties are benefiting from this activity by upgrading their properties and renting to new tenants. Mr. Spoor stated that the third criteria is normal conventional financing available and if so under what terms. Mr. Spoor stated since 1986 all these types of bond issues are taxable. He stated the interest rates on these bonds would be the same that anyone would pay on normal conventional borrowing. He stated the significant advantage is the reduced taxes that the developer has to pay. He indicated that translates into a better cash flow for the project which means a lender will then buy the bonds based upon those cash flows. He stated that he has been doing these types of deals for quite some time and does not feel conventional financing would be available for this project. He stated if it were available the interest rates would be higher than market because of the extraordinary costs. He stated the best evidence of this is the bond issue outstanding now. If they lose the tax abatement then it's an event of default and the bonds will be called. He indicated that was the best evidence of the alternative not being good if we do not have the incentive. He stated the fourth question is does this project qualify under the statute. Mr. Spoor stated that this project does qualify

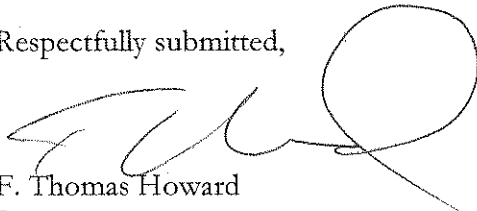
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under the statute: KRS 103.200 (Subsection N) as a downtown redevelopment. Mr. Spoor stated the final question is regarding economic soundness. Mr. Spoor stated that goes back to the market study and by all the projections it will be successful and to date it has been successful. This project increases the tax base as well as employment. Mr. Spoor stated the project is well in focus of the five criteria that are mandatory.

Ms. Lassiter made a motion to approve Buttermilk Towne Center project and was seconded by Mr. Ross. **Motion CARRIED.**

Chairman Flanery stated the only other business she wanted to make a note of is there will be a meeting in January 2008 for the state portion of the private activity bond allocation. Chairman Flanery stated that the numbers would be based on the census information that Mr. Ramsey would be getting very soon. Chairman Flanery stated that there would be another meeting in the spring for the local portion of the private activity bond allocation. Chairman Flanery asked if there was any other business. With no further business before the Committee, Ms. Lassiter made a motion to adjourn the meeting and was seconded by Ms. Smith. **Motion CARRIED.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'F. Thomas Howard', with a large circular flourish at the end.

F. Thomas Howard
Secretary