

AGENDA

**City of University Heights, Iowa
City Council Meeting**

Tuesday, Sept. 27, 2011

Location: University Club

1360 Melrose Ave.

7:00 – 10:00 P.M.

Meeting called by Mayor Louise From

Time	Topic	Owner
7:00	Call to Order Meeting	Louise From
7:01	- Presentation of revised report sent by Terry, Lockridge & Dunn after September 13, 2011 Council meeting	Mike Mesch of Terry, Lockridge & Dunn
	Public Input	
7:15	- Continued discussion of the TIF request, TIF process, and TIF Development Agreement for One University Place.	John Danos, Jeff Maxwell Team
	<u>One University Place</u>	
	- Continued discussion of Development Agreement between the City of University Heights and Jeff Maxwell concerning One University Place.	Steve Ballard
	- Continued discussion of Multiple-Family Commercial PUD Plan Application for One University Place.	Josiah Bilskemper John Yapp, Kent Ralston MPO-JC
	- Discussion of LEED certification worksheet .	
	- Discussion of compromises during consideration of OUP development proposal.	
	- Discussion of rental property.	
	Planning Staff report	John Yapp, Kent Ralston MPO-JC
	- Consideration of Resolution 11-14 adopting and accepting the slope classifications set forth in Existing Conditions Plan and Sensitive Areas Development Plan for One University Place, as shown on revised Sheet C-103 of the Multiple-Family Commercial PUD Application. Accepting this plan establishes the slope classifications shown on Revised Sheet C-103.	Josiah Bilskemper

Time	Topic	Owner
<u>Administration</u>		
-Mayor	Mayor's Report	Louise From
-City Attorney	Legal Report	Steve Ballard
-City Clerk	City Clerk Report	Chris Anderson
	<ul style="list-style-type: none"> - Discussion of Council policy/ordinance requiring reports and information submitted for Council action to be received at least 24 hours before meeting start time or they will not be considered and acted upon unless a supermajority of the Council suspends the policy. 	Brennan McGrath
	<ul style="list-style-type: none"> - Discussion of Council policy/ordinance requiring Council meetings to end by 11:00 p.m. and requiring a 10-minute break for every 2 hours of meeting time unless a supermajority of the Council suspends the policy. 	
	<ul style="list-style-type: none"> - Discussion of possibility of keeping audio recordings of Council meetings, making those recordings available for public review, and directing the Clerk to keep and publish minutes limited to Agenda items and formal action taken. 	
<u>Committee Reports:</u>		
<u>Finance</u>	Committee Report	Brennan McGrath
<u>Community Protection</u>	Committee Report - Police Chief Report	Rosanne Hopson/ Mike Haverkamp
	<ul style="list-style-type: none"> - Discussion of adding a community service committee: ex. clean-up day, garage sale, etc to broaden the community protection committee. 	
	<ul style="list-style-type: none"> - Neighborhood Watch program update 	
<u>Streets and Sidewalks</u>	Committee Report	Pat Yeggy
	<ul style="list-style-type: none"> - Consideration and discussion of upgrade to pedestrian signal and change to traffic light phasing at Melrose/Sunset intersection 	
	<ul style="list-style-type: none"> - Discussion of lane markings north of Sunset/Melrose similar to those south of Sunset/Melrose. 	
	Engineer Report	Josiah Bilskemper
<u>Building, Zoning & Sanitation</u>	Committee Report Zoning Report	Stan Laverman Pat Bauer

Time	Topic	Owner
<u>e-Government</u>	Committee Report	Mike Haverkamp
<u>MPO-JC</u> (Metropolitan Planning Organization of Johnson Co.) - formerly known as JCCOG	Committee Report	Louise From
Announcements		Anyone
Adjournment		Louise From

Next Regular Council Meeting: Tuesday, October 11th, 2011. Horn School.

September 16, 2011

City of University Heights
1004 Melrose Avenue
University Heights, IA 52246

Re: Follow-up to September 13, 2011 Council Meeting

Dear Council Members:

In follow up to our meeting on Tuesday, we want to take this opportunity to identify areas that may be of continued concern regarding our budget analysis. One of the critical areas is the assumption we used for the growth in revenues from property taxes. In this regard, the 2% increase was based on the recommendation of the County Assessor. Given Mr. Greazel's expertise and experience with the assessments and tax revenues from the City of University Heights property, we considered his determination sufficient for the purposes of our analysis.

However, in the event his assumption of a 2% increase is not realized, the financial viability of the City of University Heights without additional sources of revenue or correspondent decreases in expenses is questionable. That is why a critical review of the City's expenses is so important for the Council to consider.

- A request was made for a recalculation using an assumed 1% growth rate. We have included that for your review as well as a scenario in which University Heights experiences 0% growth.
- Attached to this letter are three scenarios:
 - # 1 – Scenario 1 assumes average growth in property tax revenue is 0% and all other expense growth remains at the 10 year average presented in my initial report.
 - # 2 – Scenario 2 assumes average growth in property tax revenue is 1% and all other expense growth remains at the 10 year average presented in my initial report.
 - # 3 - This scenario shows by how much you would have to decrease the growth in expenses in order to remain viable over the period of the projection with a 1% growth rate in property tax revenue.

As advised on Tuesday evening, we believe it is appropriate for the Council to consider all scenarios and determine how much of an expense reduction is necessary to remain viable under each. If the City determines it is not possible to reduce expenses, the long-term viability of the City comes into question.

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We define viability as having sufficient cash reserves to last at least 20 years. This assumes the city will take advantage of this time line to make the necessary adjustments to provide a predictable horizon of cash reserves beyond this period. With that length of time, the City can consider alternative options to OUP. However, as the scenarios adjust due to decreased projected revenues or lack of ability to decrease expenses, the timeframe condenses and the time for a more immediate action becomes critical.

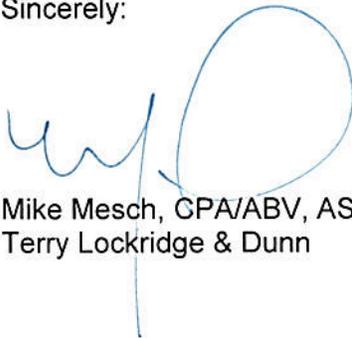
This spreadsheet is a tool that will assist the Council in determining viability. If property taxes grow at a 1% rate then more expenses will need to be reduced to remain viable. It is incumbent on the Council to determine if and how the budget can be reduced or if revenues can be increased in other ways to keep the City viable.

- In addition to the 1% analysis, there were several issues raised in regard to the LOST income and expenses. The key question is whether those expenses are discretionary or non-discretionary. In other words, absent the LOST revenue, will the expenses that have been paid for by the LOST revenue still be incurred in the future? An affirmative answer will require adjustment to the previously provided projections.

We wish to reiterate it is our desire to provide to you the information necessary to arrive at a correct answer regarding the City of University Heights' continued economic viability. We have endeavored to have the analysis reflect all critical viewpoints; it remains incumbent on you to advise us if there is anything in the analysis which should be further examined or modified.

Given the critical nature of this analysis, we wish to take all reasonable measures to ensure it reflects the most complete and accurate information available.

Sincerely:



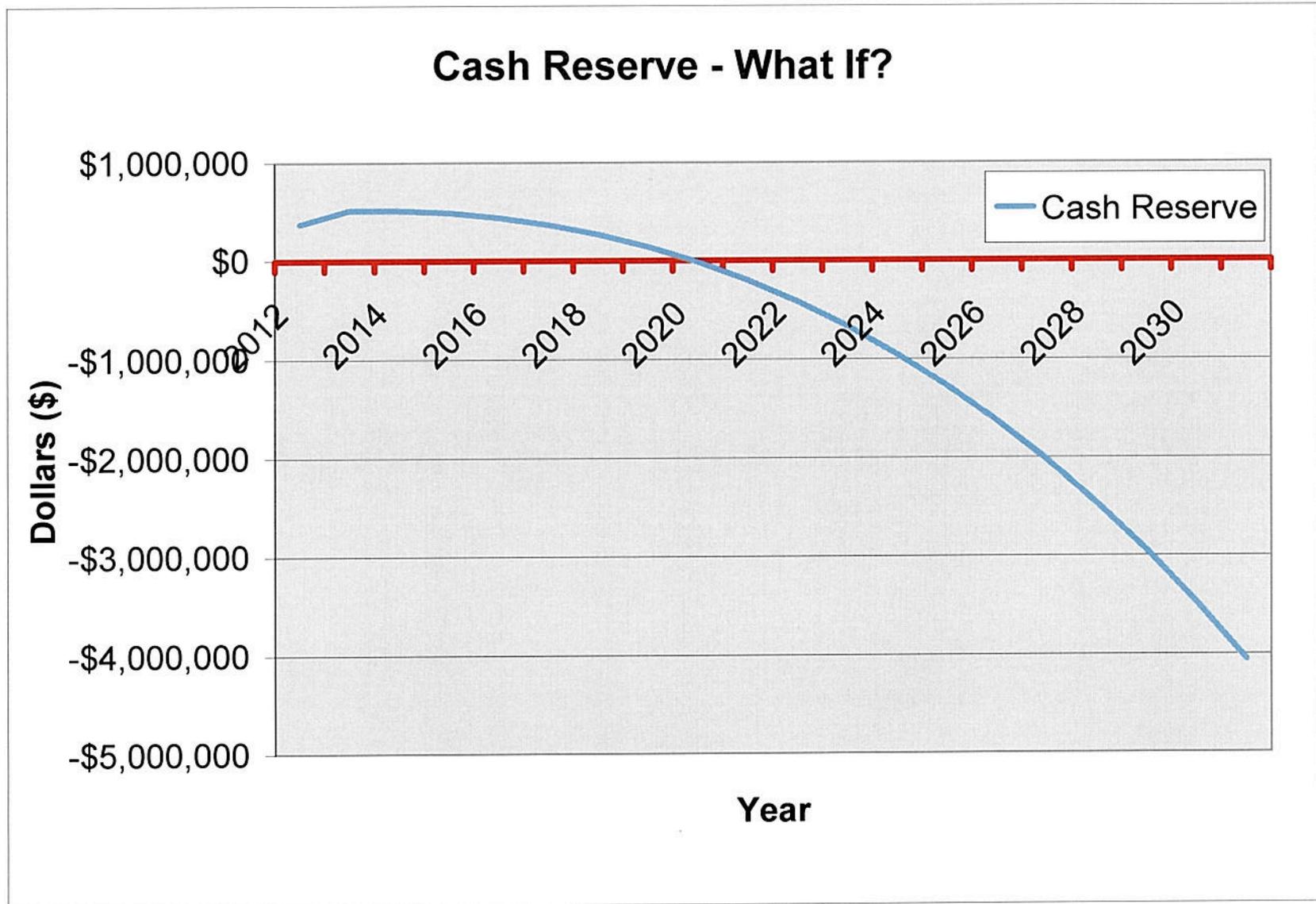
Mike Mesch, CPA/ABV, ASA, CFF
Terry Lockridge & Dunn



Timothy Terry
Terry Lockridge & Dunn

ANALYSIS

What if Revenues Increase by 0% and Expenses are not Reduced?



ANALYSIS
What if Revenues Increase by 0% and Expenses are not Reduced?

	UAC Property Tax Revenue	\$ 27,000	\$ 27,000	\$ 27,000	\$ 27,000	\$ 27,000	\$ 27,000	\$ 27,000	\$ 27,000
				Loss of LOST Revenue		Stabilization of UAC Revenue			
		2012	2013	2014	2015	2016	2017	2018	2019
Ordinary Income/Expense									
Income									
TOTAL GENERAL PROPERTY TAXES		552,229	552,229	552,229	552,229	552,229	552,229	552,229	552,229
OTHER CITY TAXES									
OUP Revenue		-	-	-	-	-	-	-	-
University Athletic Club Tax		27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000
Local Option Sales Tax		125,000	125,000						
Total OTHER CITY TAXES		152,000	152,000	27,000	27,000	27,000	27,000	27,000	27,000
INTERGOVERNMENTAL/SHARED REVENUE									
Road Use/Street Construction		90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000
Total Other State Grants/Reimburse.		12,600	12,726	12,853	12,982	13,112	13,243	13,375	13,509
Total INTERGOVERNMENTAL/SHARED REVENUE		102,600	102,726	102,853	102,982	103,112	103,243	103,375	103,509
MISCELLANEOUS REVENUES		103,428	104,462	105,507	106,562	107,628	108,704	109,791	110,889
DEBT ISSUED									
Total Income		\$ 910,257	\$ 911,417	\$ 787,589	\$ 788,773	\$ 789,968	\$ 791,176	\$ 792,395	\$ 793,627
Average Revenue Growth			0.1%	-13.6%	0.2%	0.2%	0.2%	0.2%	0.2%
Expense									
CAPITAL PROJECTS		-	-	-	-	-	-	-	-
PUBLIC SAFETY		(384,232)	(390,744)	(410,281)	(430,795)	(452,335)	(474,951)	(498,699)	(523,634)
PUBLIC WORKS		(265,506)	(198,661)	(200,648)	(202,654)	(204,681)	(206,727)	(208,795)	(210,883)
CULTURE & RECREATION		(38,118)	(38,499)	(38,884)	(39,273)	(39,666)	(40,062)	(40,463)	(40,868)
COMMUNITY & ECONOMIC DEV.		(5,000)	(5,050)	(5,101)	(5,152)	(5,203)	(5,255)	(5,308)	(5,361)
GENERAL GOVERNMENT		(100,328)	(101,331)	(102,345)	(103,368)	(104,402)	(105,446)	(106,500)	(107,565)
ANNUAL COST TO UH OF OUP IMPROVEMENTS		-	-	-	-	-	-	-	-
Total Expense		(793,184)	(734,285)	(757,258)	(781,242)	(806,296)	(832,442)	(859,784)	(888,310)
Projected Profit/(Loss) before Debt Service		\$ 117,073	\$ 177,132	\$ 30,331	\$ 7,531	\$ (16,318)	\$ (41,266)	\$ (67,369)	\$ (94,683)
Cash Reserve		290,184	374,427	518,729	516,231	490,932	441,784	367,688	267,489
Debt Service		(32,830)	(32,830)	(32,830)	(32,830)	(32,830)	(32,830)	(32,830)	(32,830)
Profit/(Loss)		117,073	177,132	30,331	7,531	(16,318)	(41,266)	(67,369)	(94,683)
New Cash Reserve		374,427	518,729	516,231	490,932	441,784	367,688	267,489	139,975
Reserve Percentage		47.2%	70.6%	68.2%	62.6%	54.8%	44.2%	31.1%	15.8%
Percentage Expense Growth				3.1%	3.2%	3.2%	3.2%	3.3%	3.3%

Assumptions:			
1	Annual Cost to City of OUP Improvements (assuming project is approved)	\$	-
2	Annual Increase in Taxable Value of UH Property	0.0%	This is in line with historical growth in taxable values in University Heights
3	Annual Increase in City Expenses		
a)	Public Safety - Average from 2001 - 2010 was 5%	5.0%	This is historical average
b)	All other	1.0%	Historically these have remained relatively constant expenses
4	Once LOST is over, expenses will decrease in line with LOST revenue decrease		
5	Cost of Capital Projects will be offset by Future Bonding		
6	Increase in Seatbelt Incentive/Traffic Safety	1.0%	
7	IJOBS (ARRA) funds will cease on 2012 year-end budget		
8	LOST funds will cease after June 30, 2013		
9	Road Use/Street Construction	0.0%	
10	Annual Increase in Miscellaneous Revenues (included are permit income, traffic and parking fines, refunds and reimbursements)	1.0%	
11	Increase in road-use and street construction	0.0%	
12	Debt Service will increase in line with growth in taxable value of property	0.0%	
13	Revenue from OUP	\$	-

THE ABOVE ANALYSES ARE ESTIMATED PROJECTIONS BASED ON THE ASSUMPTIONS ABOVE. ACTUAL FUTURE REVENUES AND EXPENSES WILL VARY AND THE DIFFERENCE MAY BE MATERIAL.

ANALYSIS
What if Revenues Increase by 0% and Expenses are not Reduced?

UAC Property Tax Revenue

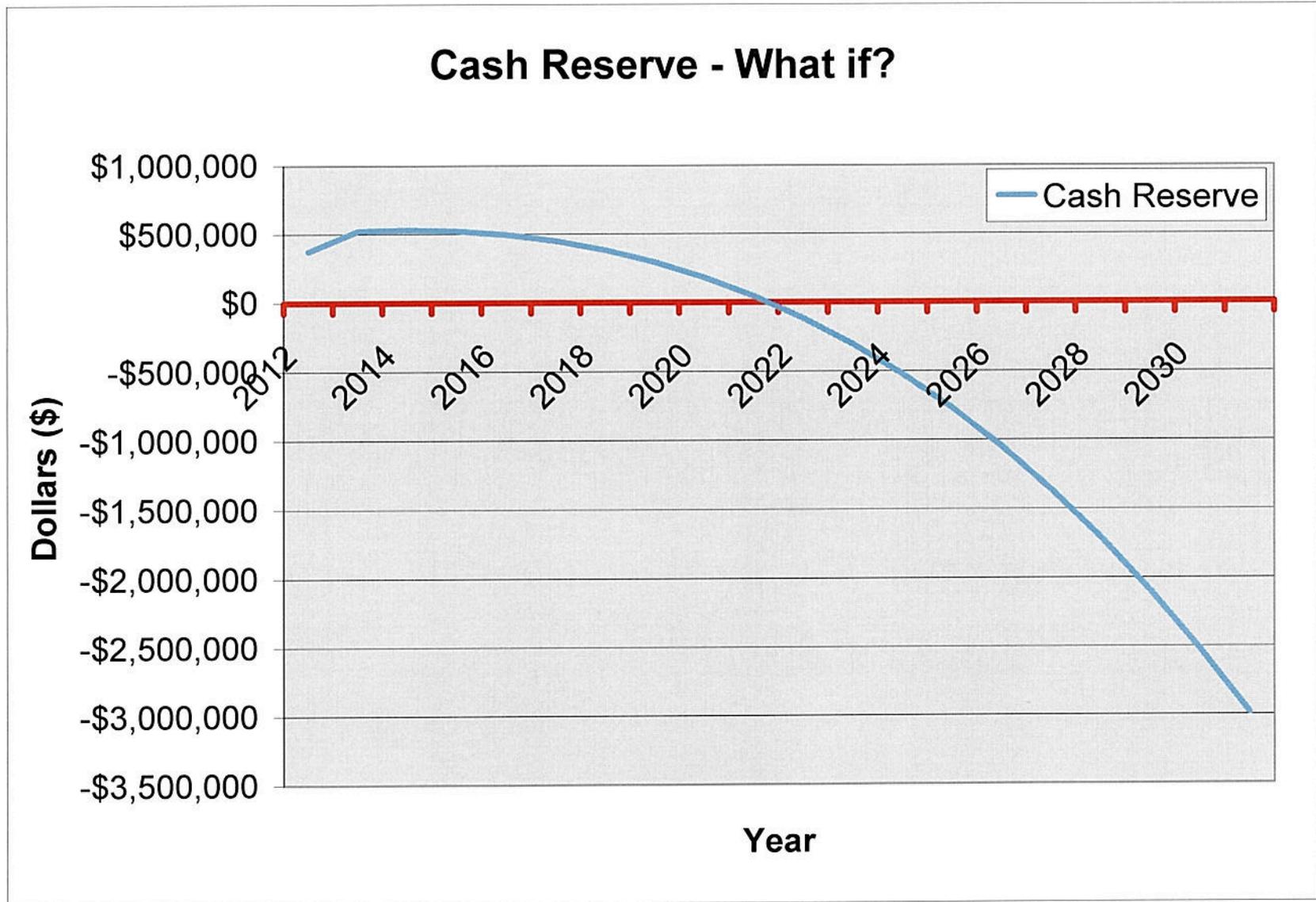
	2020	2021	2022	2023	2024	2025	2026	2027	2028
Ordinary Income/Expense									
Income									
TOTAL GENERAL PROPERTY TAXES	552,229	552,229	552,229	552,229	552,229	552,229	552,229	552,229	552,229
OTHER CITY TAXES									
OUP Revenue	-	-	-	-	-	-	-	-	-
University Athletic Club Tax	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000
Local Option Sales Tax	-	-	-	-	-	-	-	-	-
Total OTHER CITY TAXES	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000
INTERGOVERNMENTAL/SHARED REVENUE									
Road Use/Street Construction	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000
Total Other State Grants/Reimburse.	13,644	13,780	13,918	14,057	14,198	14,340	14,483	14,628	14,774
Total INTERGOVERNMENTAL/SHARED REVENUE	103,644	103,780	103,918	104,057	104,198	104,340	104,483	104,628	104,774
MISCELLANEOUS REVENUES	111,998	113,118	114,249	115,391	116,545	117,711	118,888	120,077	121,277
DEBT ISSUED	-	-	-	-	-	-	-	-	-
Total Income	\$ 794,871	\$ 796,127	\$ 797,396	\$ 798,678	\$ 799,972	\$ 801,280	\$ 802,600	\$ 803,934	\$ 805,281
Average Revenue Growth	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%
Expense									
CAPITAL PROJECTS	-	-	-	-	-	-	-	-	-
PUBLIC SAFETY	(549,815)	(577,306)	(606,172)	(636,480)	(668,304)	(701,719)	(738,805)	(773,646)	(812,326)
PUBLIC WORKS	(212,992)	(215,121)	(217,273)	(219,445)	(221,640)	(223,856)	(226,095)	(228,356)	(230,639)
CULTURE & RECREATION	(41,276)	(41,689)	(42,106)	(42,527)	(42,952)	(43,382)	(43,816)	(44,254)	(44,696)
COMMUNITY & ECONOMIC DEV.	(5,414)	(5,468)	(5,523)	(5,578)	(5,634)	(5,690)	(5,747)	(5,805)	(5,863)
GENERAL GOVERNMENT	(108,641)	(109,727)	(110,825)	(111,933)	(113,052)	(114,183)	(115,324)	(116,478)	(117,642)
ANNUAL COST TO UH OF OUP IMPROVEMENTS	-	-	-	-	-	-	-	-	-
Total Expense	(918,136)	(949,312)	(981,898)	(1,015,964)	(1,051,583)	(1,088,831)	(1,127,788)	(1,168,538)	(1,211,169)
Projected Profit/(Loss) before Debt Service	\$ (123,268)	\$ (153,185)	\$ (184,502)	\$ (217,286)	\$ (251,610)	\$ (287,551)	\$ (325,187)	\$ (364,604)	\$ (405,888)
Cash Reserve	139,975	(16,123)	(202,138)	(419,470)	(669,586)	(954,026)	(1,274,407)	(1,632,424)	(2,029,858)
Debt Service	(32,830)	(32,830)	(32,830)	(32,830)	(32,830)	(32,830)	(32,830)	(32,830)	(32,830)
Profit/(Loss)	(123,268)	(153,185)	(184,502)	(217,286)	(251,610)	(287,551)	(325,187)	(364,604)	(405,888)
New Cash Reserve	(16,123)	(202,138)	(419,470)	(669,586)	(954,026)	(1,274,407)	(1,632,424)	(2,029,858)	(2,468,576)
Reserve Percentage	-1.8%	-21.3%	-42.7%	-65.9%	-90.7%	-117.0%	-144.7%	-173.7%	-203.8%
Percentage Expense Growth	3.4%	3.4%	3.4%	3.5%	3.5%	3.5%	3.6%	3.6%	3.6%

Assumptions:		
1	Annual Cost to City of OUP Improvements (assuming project is approved)	\$ -
2	Annual Increase in Taxable Value of UH Property	0.0%
3	Annual Increase in City Expenses	
a)	Public Safety - Average from 2001 - 2010 was 5%	5.0%
b)	All other	1.0%
4	Once LOST is over, expenses will decrease in line with LOST revenue decrease	
5	Cost of Capital Projects will be offset by Future Bonding	
6	Increase in Seatbelt Incentive/Traffic Safety	1.0%
7	LJOBS (ARRA) funds will cease on 2012 year-end budget	
8	LOST funds will cease after June 30, 2013	
9	Road Use/Street Construction	0.0%
10	Annual Increase in Miscellaneous Revenues (included are permit income, traffic and parking fines, refunds and reimbursements)	1.0%
11	Increase in road-use and street construction	0.0%
12	Debt Service will increase in line with growth in taxable value of property	0.0%
13	Revenue from OUP	\$ -

**THE ABOVE ANALYSES ARE ESTIMATED PROJECTIONS BASED ON THE ASSUMPTIONS ABOVE.
ACTUAL FUTURE REVENUES AND EXPENSES WILL VARY AND THE DIFFERENCE MAY BE MATERIAL.**

ANALYSIS

What if Revenues Increase by 1% and Expenses are not Reduced?



ANALYSIS
What If Revenues Increase by 1% and Expenses are Not Reduced?
9-15-11

	2012	2013	2014	2015	2016	2017	2018	2019	2020
University Athletic Club Tax Revenue	\$ 27,000	\$ 27,270	\$ 27,543	\$ 27,818	\$ 28,096				
			Loss of LOST Revenue		Stabilization of UAC Tax Revenue				
Ordinary Income/Expense									
Income									
TOTAL GENERAL PROPERTY TAXES	552,229	557,751	563,329	568,962	574,652	580,398	586,202	592,064	597,985
OTHER CITY TAXES									
OUP Revenue	-	-	-	-	-	-	-	-	-
University Athletic Club Tax	27,000	27,270	27,543	27,818	28,096	28,096	28,096	28,096	28,096
Local Option Sales Tax	125,000	125,000							
Total OTHER CITY TAXES	152,000	152,270	27,543	27,818	28,096	28,096	28,096	28,096	28,096
INTERGOVERNMENTAL/SHARED REVENUE									
Road Use/Street Construction	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000
Total Other State Grants/Reimburse.	12,600	12,726	12,853	12,982	13,112	13,243	13,375	13,509	13,644
Total INTERGOVERNMENTAL/SHARED REVENUE	102,600	102,726	102,853	102,982	103,112	103,243	103,375	103,509	103,644
Total MISCELLANEOUS REVENUES	103,428	104,462	105,507	106,562	107,628	108,704	109,791	110,889	111,998
DEBT ISSUED									
Total Income	\$ 910,257	\$ 917,210	\$ 799,232	\$ 806,324	\$ 813,487	\$ 820,441	\$ 827,465	\$ 834,558	\$ 841,723
Average Revenue Growth		0.8%	-12.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%
Expense									
CAPITAL PROJECTS	0.00								
Wide Sidewalk Project	0								
Construction	-								
Engineering fees sidewalk proj	-								
Total Wide Sidewalk Project	-								
CAPITAL PROJECTS									
PUBLIC SAFETY	(384,232)	(390,744)	(410,281)	(430,795)	(452,335)	(474,951)	(498,699)	(523,634)	(549,815)
PUBLIC WORKS	(265,506)	(198,661)	(200,648)	(202,654)	(204,681)	(206,727)	(208,795)	(210,883)	(212,992)
CULTURE & RECREATION	(38,118)	(38,499)	(38,884)	(39,273)	(39,666)	(40,062)	(40,463)	(40,868)	(41,276)
COMMUNITY & ECONOMIC DEV.	(5,000)	(5,050)	(5,101)	(5,152)	(5,203)	(5,255)	(5,308)	(5,361)	(5,414)
GENERAL GOVERNMENT	(100,328)	(101,331)	(102,345)	(103,368)	(104,402)	(105,446)	(106,500)	(107,565)	(108,641)
ANNUAL COST TO UH OF OUP IMPROVEMENTS									
Total Expense	(793,184)	(734,285)	(757,256)	(781,242)	(806,286)	(832,442)	(859,764)	(888,310)	(918,136)
ABILITY TO PAY DEBT OR ADD TO CASH RESERVE	\$ 117,073	\$ 182,924	\$ 41,974	\$ 25,082	\$ 7,201	\$ (12,001)	\$ (32,300)	\$ (53,752)	\$ (76,416)
Cash Reserve	290,184	374,427	524,193	532,677	523,935	496,973	450,468	383,318	294,368
Debt Service	(32,830)	(33,158)	(33,490)	(33,825)	(34,163)	(34,505)	(34,850)	(35,198)	(35,550)
Profit/(Loss)	117,073	182,924	41,974	25,082	7,201	(12,001)	(32,300)	(53,752)	(76,416)
New Cash Reserve	374,427	524,193	532,677	523,935	496,973	450,468	383,318	294,368	182,403
	47.2%	71.4%	70.3%	67.1%	61.6%	54.1%	44.6%	33.1%	19.9%
Percentage Expense Growth			3.1%	3.2%	3.2%	3.2%	3.3%	3.3%	3.4%

Assumptions:		
1	Annual Cost to City of OUP Improvements (assuming project is approved)	\$ -
2	Annual Increase in Taxable Value of UH Property	1.0%
3	Annual Increase in City Expenses	
a)	Public Safety - Average from 2001 - 2010 was 5%	5.0%
b)	All other	1.0%
4	Once LOST is over, expenses will decrease in line with LOST revenue decrease	
5	Cost of Capital Projects will be offset by Future Bonding	
6	Increase in Seatbelt Incentive/Traffic Safety Income	1.0%
7	IJOBS (ARRA) funds will cease on 2012 year-end budget	
8	LOST funds will cease after June 30, 2013	
9	Road Use/Street Construction Income	
10	Annual Increase in Miscellaneous Revenues (included are permit income, traffic and parking fines, refunds and reimbursements)	1.0%
11	Debt Service will increase in line with growth in taxable value of property	1.0%
12	Revenue from OUP	\$ -

THE ABOVE ANALYSES ARE ESTIMATED PROJECTIONS BASED ON THE ASSUMPTIONS ABOVE.
ACTUAL FUTURE REVENUES AND EXPENSES WILL VARY AND THE DIFFERENCE MAY BE MATERIAL.

ANALYSIS
What If Revenues Increase by 1% and Expenses are Not Reduced?
9-15-11

University Athletic Club Tax Revenue

	2021	2022	2023	2024	2025	2026	2027	2028	2029
Ordinary Income/Expense									
Income									
TOTAL GENERAL PROPERTY TAXES	603,965	610,004	616,104	622,265	628,488	634,773	641,121	647,532	654,007
OTHER CITY TAXES									
OUP Revenue	-	-	-	-	-	-	-	-	-
University Athletic Club Tax	28,096	28,096	28,096	28,096	28,096	28,096	28,096	28,096	28,096
Local Option Sales Tax	-	-	-	-	-	-	-	-	-
Total OTHER CITY TAXES	28,096	28,096	28,096	28,096	28,096	28,096	28,096	28,096	28,096
INTERGOVERNMENTAL/SHARED REVENUE									
Road Use/Street Construction	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000
Total Other State Grants/Reimburse.	13,780	13,918	14,057	14,198	14,340	14,483	14,628	14,774	14,922
Total INTERGOVERNMENTAL/SHARED REVENUE	103,780	103,918	104,057	104,198	104,340	104,483	104,628	104,774	104,922
Total MISCELLANEOUS REVENUES	113,118	114,249	115,391	116,545	117,711	118,888	120,077	121,277	122,490
DEBT ISSUED									
Total Income	\$ 848,959	\$ 856,268	\$ 863,649	\$ 871,105	\$ 878,635	\$ 886,240	\$ 893,922	\$ 901,680	\$ 909,516
Average Revenue Growth	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%
Expense									
CAPITAL PROJECTS									
Wide Sidewalk Project									
Construction									
Engineering fees sidewalk proj									
Total Wide Sidewalk Project									
CAPITAL PROJECTS									
PUBLIC SAFETY	(577,306)	(606,172)	(636,480)	(668,304)	(701,719)	(736,805)	(773,646)	(812,328)	(852,944)
PUBLIC WORKS	(215,121)	(217,273)	(219,445)	(221,640)	(223,856)	(226,095)	(228,356)	(230,639)	(232,946)
CULTURE & RECREATION	(41,689)	(42,106)	(42,527)	(42,952)	(43,382)	(43,816)	(44,254)	(44,696)	(45,143)
COMMUNITY & ECONOMIC DEV.	(5,468)	(5,523)	(5,578)	(5,634)	(5,690)	(5,747)	(5,805)	(5,863)	(5,922)
GENERAL GOVERNMENT	(109,727)	(110,825)	(111,933)	(113,052)	(114,183)	(115,324)	(116,478)	(117,642)	(118,819)
ANNUAL COST TO UH OF OUP IMPROVEMENTS									
Total Expense	(949,312)	(981,896)	(1,015,964)	(1,051,583)	(1,088,631)	(1,127,788)	(1,168,536)	(1,211,169)	(1,256,774)
ABILITY TO PAY DEBT OR ADD TO CASH RESERVE	\$ (100,353)	\$ (125,630)	\$ (152,314)	\$ (180,478)	\$ (210,195)	\$ (241,547)	\$ (274,616)	\$ (309,489)	\$ (346,258)
Cash Reserve	182,403	46,143	(115,751)	(304,693)	(522,164)	(769,723)	(1,049,008)	(1,361,738)	(1,709,722)
Debt Service	(35,906)	(36,265)	(36,627)	(36,994)	(37,364)	(37,737)	(38,115)	(38,496)	(38,881)
Profit/(Loss)	(100,353)	(125,630)	(152,314)	(180,478)	(210,195)	(241,547)	(274,616)	(309,489)	(346,258)
New Cash Reserve	46,143	(115,751)	(304,693)	(522,164)	(769,723)	(1,049,008)	(1,361,738)	(1,709,722)	(2,094,861)
	4.9%								
Percentage Expense Growth	3.4%	3.4%	3.5%	3.5%	3.5%	3.6%	3.6%	3.6%	3.7%

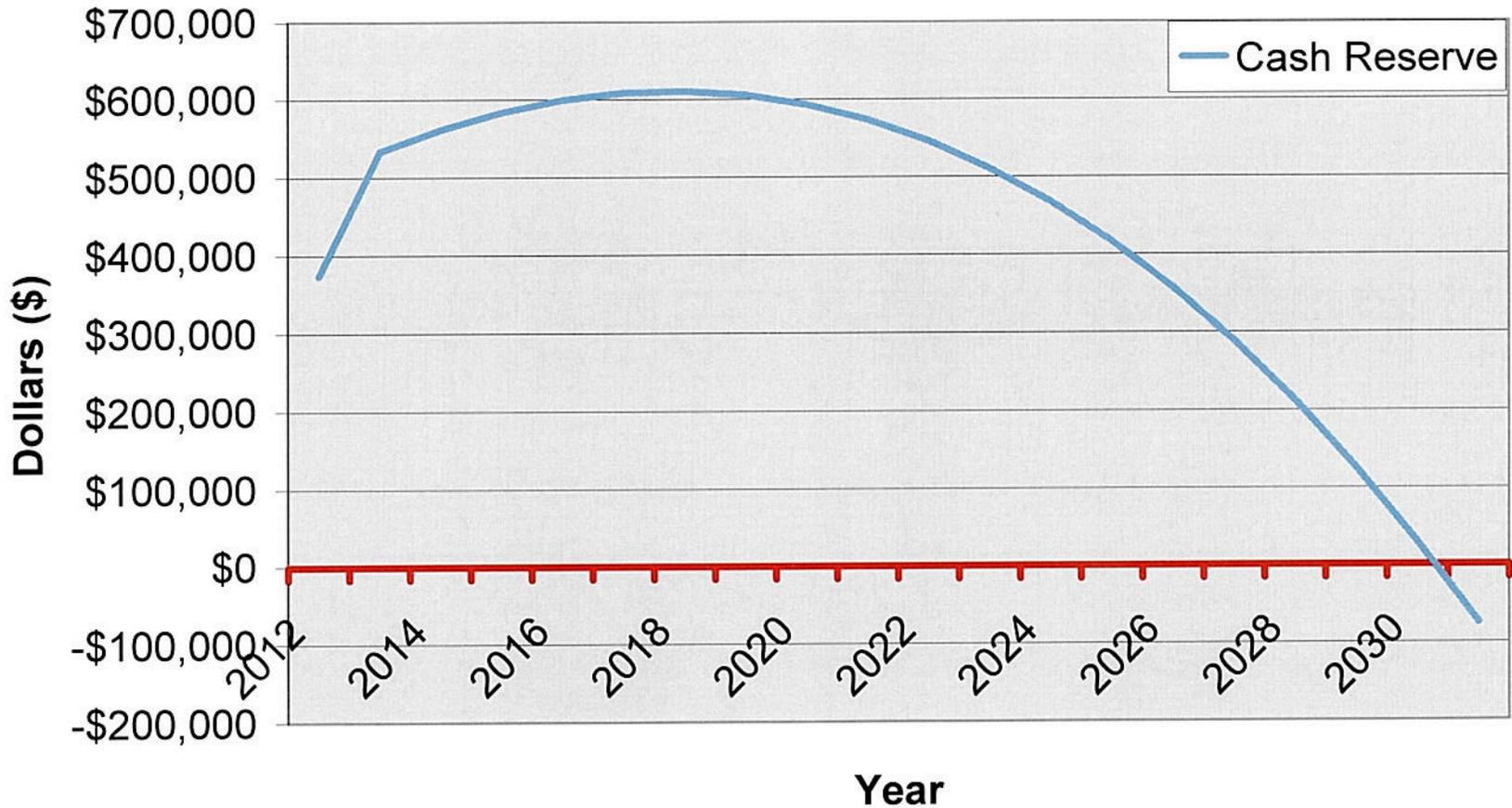
Assumptions:		
1	Annual Cost to City of OUP Improvements (assuming project is approved)	\$ -
2	Annual Increase in Taxable Value of UH Property	1.0%
3	Annual Increase in City Expenses	
a)	Public Safety - Average from 2001 - 2010 was 5%	5.0%
b)	All other	1.0%
4	Once LOST is over, expenses will decrease in line with LOST revenue decrease	
5	Cost of Capital Projects will be offset by Future Bonding	
6	Increase in Seatbelt Incentive/Traffic Safety Income	1.0%
7	JOBS (ARRA) funds will cease on 2012 year-end budget	
8	LOST funds will cease after June 30, 2013	
9	Road Use/Street Construction Income	
10	Annual Increase in Miscellaneous Revenues (included are permit income, traffic and parking fines, refunds and reimbursements)	1.0%
11	Debt Service will increase in line with growth in taxable value of property	1.0%
12	Revenue from OUP	\$ -

THE ABOVE ANALYSES ARE ESTIMATED PROJECTIONS BASED ON THE ASSUMPTIONS ABOVE.
ACTUAL FUTURE REVENUES AND EXPENSES WILL VARY AND THE DIFFERENCE MAY BE MATERIAL.

ANALYSIS

What if Revenues Increase by 1% and Expenses are Reduced to 1.5% Growth?

Cash Reserve - What If?



ANALYSIS
What if Revenues Increase by 1% and Expenses are Reduced to 1.5% Growth?

	2012	2013	2014	2015	2016	2017	2018	2019
UAC PROPERTY TAX REVENUE	\$ 27,000	\$ 27,270	\$ 27,543	\$ 27,818	\$ 28,096			
			Loss of LOST Revenue		Stabilization of UAC Tax Revenue			
Ordinary Income/Expense								
Income								
TOTAL GENERAL PROPERTY TAXES	552,229	557,751	563,329	568,962	574,652	580,398	586,202	592,064
OTHER CITY TAXES								
Revenue from OUP	-	-	-	-	-	-	-	-
University Athletic Club Tax	27,000	27,270	27,543	27,818	28,096	28,096	28,096	28,096
Local Option Sales Tax	125,000	125,000						
Total OTHER CITY TAXES	152,000	152,270	27,543	27,818	28,096	28,096	28,096	28,096
INTERGOVERNMENTAL/SHARED REVENUE								
Road Use/Street Construction	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000
Total Other State Grants/Reimburse.	12,600	12,726	12,853	12,982	13,112	13,243	13,375	13,509
Total INTERGOVERNMENTAL/SHARED REVENUE	102,600	102,726	102,853	102,982	103,112	103,243	103,375	103,509
MISCELLANEOUS REVENUES	103,428	104,462	105,507	106,562	107,628	108,704	109,791	110,889
DEBT ISSUED								
Total Income	\$ 910,257	\$ 917,210	\$ 799,232	\$ 806,324	\$ 813,487	\$ 820,441	\$ 827,465	\$ 834,558
Average Revenue Growth		0.8%	-12.6%	0.9%	0.9%	0.9%	0.9%	0.9%
Expense								
CAPITAL PROJECTS	-	-	-	-	-	-	-	-
PUBLIC SAFETY	(384,232)	(378,256)	(384,876)	(391,611)	(398,464)	(405,437)	(412,532)	(419,752)
PUBLIC WORKS	(265,506)	(200,652)	(204,164)	(207,737)	(211,372)	(215,071)	(218,835)	(222,604)
CULTURE & RECREATION	(38,118)	(38,785)	(39,464)	(40,154)	(40,857)	(41,572)	(42,300)	(43,040)
COMMUNITY & ECONOMIC DEV.	(5,000)	(5,088)	(5,177)	(5,267)	(5,359)	(5,453)	(5,549)	(5,646)
GENERAL GOVERNMENT	(100,328)	(102,084)	(103,870)	(105,688)	(107,537)	(109,419)	(111,334)	(113,283)
Total Expense	(793,184)	(724,865)	(737,550)	(750,457)	(763,590)	(776,953)	(790,549)	(804,384)
ABILITY TO PAY DEBT OR ADD TO CASH RESERVE	\$ 117,073	\$ 192,345	\$ 61,682	\$ 55,867	\$ 49,897	\$ 43,488	\$ 36,915	\$ 30,174
Cash Reserve	290,184	374,427	533,614	561,805	583,848	599,582	608,566	610,631
Debt Service	(32,830)	(33,158)	(33,490)	(33,825)	(34,163)	(34,505)	(34,850)	(35,198)
Profit/(Loss)	117,073	192,345	61,682	55,867	49,897	43,488	36,915	30,174
New Cash Reserve	374,427	533,614	561,805	583,848	599,582	608,566	610,631	605,607
	47.2%	73.6%	76.2%	77.8%	78.5%	78.3%	77.2%	75.3%
Percentage Expense Growth			1.8%	1.8%	1.8%	1.8%	1.8%	1.8%

Assumptions:		
1	Annual Cost to City of OUP Improvements (assuming project is approved)	\$ -
2	Annual Increase in Taxable Value of UH Property	1.0%
3	Annual Increase in City Expenses	
a)	Public Safety - Average from 2001 - 2010 was 5%	1.8%
b)	All other	1.8%
4	Once LOST is over, expenses will decrease in line with LOST revenue decrease	
5	Cost of Capital Projects will be offset by Future Bonding	
6	Increase in Seatbelt Incentive/Traffic Safety	1.0%
7	IJOBS (ARRA) funds will cease on 2012 year-end budget	
8	LOST funds will cease after June 30, 2013	
9	Road Use/Street Construction	0.0%
10	Annual Increase in Miscellaneous Revenues (included are permit income, traffic and parking fines, refunds and reimbursements)	1.0%
11	Debt Service will increase in line with growth in taxable value of property	1.0%
12	Revenue from OUP	\$ -

THE ABOVE ANALYSES ARE ESTIMATED PROJECTIONS BASED ON THE ASSUMPTIONS ABOVE.
ACTUAL FUTURE REVENUES AND EXPENSES WILL VARY AND THE DIFFERENCE MAY BE MATERIAL.

ANALYSIS
What If Revenues Increase by 1% and Expenses are Reduced to 1.5% Growth?

UAC PROPERTY TAX REVENUE

	2020	2021	2022	2023	2024	2025	2026	2027	2028
Ordinary Income/Expense									
Income									
TOTAL GENERAL PROPERTY TAXES	597,985	603,965	610,004	616,104	622,265	628,488	634,773	641,121	647,532
OTHER CITY TAXES									
Revenue from OUP	-	-	-	-	-	-	-	-	-
University Athletic Club Tax	28,096	28,096	28,096	28,096	28,096	28,096	28,096	28,096	28,096
Local Option Sales Tax	-	-	-	-	-	-	-	-	-
Total OTHER CITY TAXES	28,096	28,096	28,096	28,096	28,096	28,096	28,096	28,096	28,096
INTERGOVERNMENTAL/SHARED REVENUE									
Road Use/Street Construction	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000
Total Other State Grants/Reimburse.	13,644	13,780	13,918	14,057	14,198	14,340	14,483	14,628	14,774
Total INTERGOVERNMENTAL/SHARED REVENUE	103,644	103,780	103,918	104,057	104,198	104,340	104,483	104,628	104,774
MISCELLANEOUS REVENUES	111,998	113,118	114,249	115,391	116,545	117,711	118,888	120,077	121,277
DEBT ISSUED									
Total Income	\$ 841,723	\$ 848,959	\$ 856,268	\$ 863,649	\$ 871,105	\$ 878,635	\$ 886,240	\$ 893,922	\$ 901,680
Average Revenue Growth	0.8%	0.8%	0.9%						
Expense									
CAPITAL PROJECTS	-	-	-	-	-	-	-	-	-
PUBLIC SAFETY	(427,097)	(434,571)	(442,176)	(449,915)	(457,788)	(465,799)	(473,951)	(482,245)	(490,684)
PUBLIC WORKS	(226,561)	(230,526)	(234,560)	(238,665)	(242,841)	(247,091)	(251,415)	(255,815)	(260,292)
CULTURE & RECREATION	(43,793)	(44,559)	(45,339)	(46,133)	(46,940)	(47,761)	(48,597)	(49,448)	(50,313)
COMMUNITY & ECONOMIC DEV.	(5,744)	(5,845)	(5,947)	(6,051)	(6,157)	(6,265)	(6,375)	(6,486)	(6,600)
GENERAL GOVERNMENT	(115,265)	(117,282)	(119,335)	(121,423)	(123,548)	(125,710)	(127,910)	(130,148)	(132,426)
Total Expense	(818,461)	(832,784)	(847,358)	(862,186)	(877,275)	(892,627)	(908,248)	(924,142)	(940,315)
ABILITY TO PAY DEBT OR ADD TO CASH RESERVE	\$ 23,262	\$ 16,175	\$ 8,910	\$ 1,463	\$ (6,170)	\$ (13,992)	\$ (22,007)	\$ (30,220)	\$ (38,635)
Cash Reserve	605,607	593,319	573,588	546,234	511,070	467,906	416,551	356,806	288,471
Debt Service	(35,550)	(35,906)	(36,265)	(36,627)	(36,994)	(37,364)	(37,737)	(38,115)	(38,496)
Profit/(Loss)	23,262	16,175	8,910	1,463	(6,170)	(13,992)	(22,007)	(30,220)	(38,635)
New Cash Reserve	593,319	573,588	546,234	511,070	467,906	416,551	356,806	288,471	211,341
	72.5%	68.9%							
Percentage Expense Growth	1.8%	1.8%	1.7%	1.8%	1.8%	1.8%	1.8%	1.8%	1.8%

Assumptions:		
1	Annual Cost to City of OUP Improvements (assuming project is approved)	\$ -
2	Annual Increase in Taxable Value of UH Property	1.0%
3	Annual Increase in City Expenses	
a)	Public Safety - Average from 2001 - 2010 was 5%	1.8%
b)	All other	1.8%
4	Once LOST is over, expenses will decrease in line with LOST revenue decrease	
5	Cost of Capital Projects will be offset by Future Bonding	
6	Increase in Seatbelt Incentive/Traffic Safety	1.0%
7	JOBS (ARRA) funds will cease on 2012 year-end budget	
8	LOST funds will cease after June 30, 2013	
9	Road Use/Street Construction	0.0%
10	Annual Increase in Miscellaneous Revenues (included are permit income, traffic and parking fines, refunds and reimbursements)	1.0%
11	Debt Service will increase in line with growth in taxable value of property	1.0%
12	Revenue from OUP	\$ -

THE ABOVE ANALYSES ARE ESTIMATED PROJECTIONS BASED ON THE ASSUMPTIONS ABOVE.
ACTUAL FUTURE REVENUES AND EXPENSES WILL VARY AND THE DIFFERENCE MAY BE MATERIAL.

DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of University Heights, Iowa (the "City") and Jeff Maxwell (the "Developer") as of the _____ day of _____, 2011.

WHEREAS, the City has established the [University Heights Urban Renewal Area] (the "Urban Renewal Area"), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Developer has proposed to acquire certain real property which is situated within the Urban Renewal Area and is more specifically described on Exhibit A hereto (the "Property"), and the Developer has proposed to undertake the construction of a two-building mixed use development on the Property in accordance with the terms and conditions set forth in a certain PUD Development Agreement (the "PUD Agreement") between the City and the Developer (attached hereto as Exhibit B); and

WHEREAS, the Developer has requested tax increment financing assistance in support of the Project; and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons, and the City desires to provide economic development assistance to the commercial activity associated with the Project;

NOW THEREFORE, the parties hereto agree as follows:

A. Developer's Covenants

1. The Developer agrees to acquire the Property and to develop, construct and maintain the Project and the Property in accordance with the PUD Agreement.

2. The Developer agrees to ensure timely payment of all property taxes with respect to all portions of the Property, so long as they remain under the ownership of the Developer, as they come due throughout the Term (as hereinafter defined) and to submit a receipt or cancelled check in evidence of each such payment.

3. The Developer agrees to enter into a Minimum Assessment Agreement (the "Assessment Agreement"), as set forth in Section 403.6 of the Code of Iowa, with respect to the Property and the Project fixing the minimum actual valuation for the Property at \$_____ as of January 1, 20____. The Developer shall produce a plan, subject to review and agreement by the City and the Johnson County Assessor, for the reasonable apportionment of the minimum actual value agreed to under the Assessment Agreement amongst the proposed property interests that will comprise the Project and be subjected to a condominium regime upon completion.

4. The Developer agrees to submit documentation to the satisfaction of the City by no later than each October 15 of each year during the Term, commencing October 15,

2012, demonstrating (1) ownership status of the Property; (2) progress with respect to the construction of the Project; (3) costs incurred to-date in connection with the construction of the Project; (4) compliance with the terms and provisions of the PUD Agreement; and (5) Compliance with the terms and conditions of this Agreement.

5. The Developer agrees to demonstrate to the satisfaction of the City Developer's ability to finance the acquisition of the Property and the construction of the Project. Developer hereby acknowledges that the demonstration required under this Section is a condition precedent to all other terms of this Agreement, and the City shall be under no obligation to perform hereunder unless and until satisfied under this Section.

6. The Developer agrees to include on the ground floor space of the completed Project 2500 square feet of space (the "Community Center Space") for use as a community center by the City. The Community Center Space shall be completed to an acceptable commercial-grade finish prior to conveyance to the City. The Community Center Space shall be conveyed to the City by lease during the Term, such lease to be prepared and drafted as a separate document. Under the lease the City shall enjoy the use of the Community Center Space at a cost of not more than \$1.00 per annum and fee simple title to the Community Center Space shall transfer to the City upon the remittance of all Payments as contemplated in Section B of this Agreement.

7. The Developer hereby acknowledges that the City's available constitutional debt capacity at the outset of this Agreement under Article XI, Section 3 of the Constitution of the State of Iowa, based upon property valuations as January 1, 2010 is \$5,130,246.

8. The Developer agrees to certify to the City by no later than November 1 of each year during the Term, commencing November 1, 2016, an amount equal to 37% of an amount equal to 90% of the estimated Incremental Property Tax Revenues (as hereinafter defined) anticipated to be paid with respect to the Property in the fiscal year immediately following such certification (the "Developer's Estimate"). Incremental Property Tax Revenues are produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental valuation of the Property, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district physical plant and equipment levy and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

9. The City and the Developer agree that the financial incentives from the City to the Developer under this Agreement are intended to promote and encourage the Developer's commercial business activity in the construction of the Project and the provision of the commercial space and facilities comprised therein. To the extent that through action of the legislature, an administrative body or court of law, it is ever determined that the provisions of Section 403.22 of the Code of Iowa apply to the provision of Incremental Property Tax Revenues hereunder, the Developer agrees that the Payment provisions set forth in B, below shall be modified to (1) fund any low and moderate income set aside as may be requires; and (2) comply with any time limitations imposed by law on the collection of Incremental Property Tax Revenues.

B. City's Obligations

1. **Payments.** In recognition of the Developer's obligations set out above, the City agrees to make annual economic development tax increment payments (the "Payments") to the Developer during the Term, pursuant to Chapters 15A and 403 of the Code of Iowa, provided, however, that the aggregate, total amount of the Payments shall not exceed \$6,500,000, and a portion of the Payments under this agreement shall be subject to annual appropriation by the City Council as set forth in Section B.4 below.

The Payments will be made on June 1 of each fiscal year, beginning on the first June 1 for which incremental property tax revenues become available, and continuing for a total of twenty (20) fiscal years, or until such time as Payments in the aggregate amount of \$6,500,000 have been made hereunder. This Agreement assumes that a portion of the taxable value of the Project will go on the property tax rolls as of January 1, 2016. Accordingly, Payments would be made on June 1 of each fiscal year, beginning June 1, 2018, and continuing through and including June 1, 2037, or until such earlier date upon which total Payments equal to \$6,500,000 have been made.

It is intended by the City that the Payments made on each June 1, a portion of which shall be subject to the right of non-appropriation as set forth below, shall be in an amount equal to 90% of the Incremental Property Tax Revenues available with respect to the Property during the twelve months immediately preceding each Payment date.

2. **Security.** The Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Johnson County Treasurer which are attributable to the Property.

3. **Full Recourse Payments.** A portion of the Payments (the "Full Recourse Payments") shall not be subject to annual appropriation by the City Council. At the outset of the Agreement the aggregate amount of Full Recourse Payments to be made hereunder hereunder shall not exceed \$4,104,196.80, such amount being equal to 80% of the available constitutional debt capacity of the City as set forth in Section A.7 above. The Full Recourse Payments shall be made on each June 1, commencing on June 1, 2018. Each Full Recourse Payment shall be in an amount equal to 63% of an amount equal to 90% of the Incremental Property Tax Revenues available to the City with respect to the Property from the Johnson County Treasurer in the twelve months preceding the respective Payment date.

By December 1, 2016, the City shall certify to the Johnson County Auditor an amount of Full Recourse Payments owing hereunder equal to \$4,104,196.80. To the extent that the aggregate amount of Full Recourse Payments due hereunder increases beyond said amount, the City shall submit additional certifications to the Johnson County Auditor with respect thereto.

4. **Annual Appropriation Payments.** A portion of the Payments (the "Annual Appropriation Payments") shall be subject to annual appropriation by the City Council. At the outset of the Agreement the aggregate amount of Annual Appropriation Payments to be made hereunder hereunder shall not exceed \$2,395,803.20, such amount being equal to 20% of the available constitutional debt capacity of the City as set forth in Section A.7 above. Prior to

December 1 of each year during the term of this Agreement, commencing in the fall of 2016, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payments due in the following fiscal year, an amount of tax increment revenues to be collected in the following fiscal year equal to or less than 37% of the most recent Developer's Estimate (the "Appropriated Amount").

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Annual Appropriation Payments scheduled to become due in the following fiscal year, and the Developer will have no rights whatsoever to compel the City to make such Annual Appropriation Payments or to seek damages relative thereto. A determination by the City Council to not obligate funds for any particular fiscal year's Payments shall not render this Agreement null and void, and the Developer shall make the next succeeding submission of the Developer's Estimate as called for in Section A.8 above, provided, however, that no Annual Appropriation Payments shall be made after June 1, 2037.

In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, then the City Clerk will certify by December 1 of each such year to the Johnson County Auditor an amount equal to the most recently obligated Appropriated Amount, in satisfaction of the certification requirements of Section 403.19 of the Code of Iowa.

5. **Payment Conversion.** Prior to December 1 of each year, commencing in the fall of 2016, the City Council shall consider in good faith the question of converting some or all of an amount equal to the Annual Appropriation Payments then-remaining to be made hereunder into Full Recourse Payments, provided, however, that at no time will the aggregate amount of Full Recourse Payments owing under this Agreement be adjusted to an amount in excess of 80% of the City's then-available constitutional debt limit. The Council shall make such determination by resolution amending this Agreement. It is the intent of the City and the Developer that as the City's constitutional debt limit increases as a result of the construction and valuation of the Project, that Annual Appropriation Payments will be converted in accordance with this Section.

C. Administrative Provisions

1. This Agreement may not be amended or assigned by either party without the express permission of the other party. However, the City hereby gives its permission that the Developer's rights to receive the Payments hereunder may be assigned by the Developer to a private lender, as security on a credit facility related to the payment of costs of the Project, without further action on the part of the City.

2. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

3. The term (the "Term") of this Agreement shall run from the date first written above to the date upon which the City makes the last Payment to the Developer as set forth in Section B above, unless sooner terminated by actions of the parties hereto.

4. This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

The City and the Developer have caused this Agreement to be signed in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF UNIVERSITY HEIGHTS, IOWA

By: _____
Mayor

Attest:

City Clerk

JEFF MAXWELL

By: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Certain real property situated in the City of University Heights,
County of Johnson, State of Iowa legally described as follows:

[Insert legal Description Here]

EXHIBIT B
PUD DEVELOPMENT AGREEMENT

Prepared by and return to:	Steven Ballard, Leff Law Firm, P.O. Box 2447, Iowa City, Iowa 52244-2447, (319) 338-7551
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PUD DEVELOPMENT AGREEMENT

This Agreement is entered into by and between **Jeff Maxwell**, hereinafter referred to as "Developer" and the **City of University Heights, Iowa**, hereinafter referred to as "City", pursuant to University Heights Ordinance, No. 79.

RECITALS:

A. Developer is the owner of the real estate described and referred to as the Maxwell Parcel on the attached Exhibit A.

B. Under a written purchase agreement, St. Andrew Presbyterian Church is the Seller, and Developer is the purchaser, subject to certain seller contingencies, of the real estate described and referred to as the St. Andrew Parcels on the attached Exhibit A.

C. The Maxwell Parcel and St. Andrew Parcels are located within the City's limits and together comprise land zoned Multiple-Family Commercial. When used for multi-family and commercial purposes, Ordinance No. 79 requires the submittal of a Planned Urban Development (PUD) application and compliance with Ordinance 79(13), which section requires the Developer and the City to enter into a Development Agreement establishing development requirements and addressing certain other items enumerated in the ordinance.

D. The Developer has submitted a PUD Application for development of the Maxwell and St. Andrew parcels under a single project known presently as "One University Place" and referred to herein as the "Project".

E. St. Andrew Presbyterian Church (“Church”), as owner of the St. Andrew Parcels, has previously delivered to the City its continuing express written consent for Developer to submit to the City a Multi-Family Commercial PUD Plan Application together with such other materials, applications and requests as may be related to such PUD Plan Application and the project described therein. The Church is not a developer of the Project.

F. Developer and City wish to comply with the requirements of Ordinance 79(13), by entering into this Development Agreement setting out their agreements.

IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. **Purpose.** This Development Agreement is prepared for the purpose of complying with the Ordinance 79(13(E)).
2. **Building Plans and Construction Drawings.** Before any building permit is issued for all or any part of the Project, Developer shall submit to the City for approval detailed building plans, construction drawings, and related plans and applications for the Project in accordance with City requirements and procedures. Such plans shall reflect the design features and details of the PUD Plan approved by the City (“approved PUD Plan”) and provide explanation of any variances. To the extent that the submitted plans contain new or modified details not already shown in the approved PUD Plan, the Council may establish reasonable conditions for approval of such newly provided details in accordance with its ordinances and state law. The City shall not issue building permits until such time as the City Council has in the exercise of its reasonable discretion approved by resolution all of the plans, drawings, and applications set forth below in this paragraph. Once approved by the City, the Project shall be constructed in accordance with the approved plans, drawings, and applications, which shall not be amended, changed, or otherwise altered in any material way without further resolution adopted by the City Council. Minor adjustments may be approved administratively by the City Engineer or other authorized party in accordance with the City’s standard policies, practices, and procedures. The required plans and drawings shall include the following:
 - a. Building plans consistent in all material respects with the approved PUD Plan showing final design features applicable to the proposed Project, including but not limited to these:
 - i. Design of exterior lighting so that all site and building-mounted luminaires produce a maximum initial illuminance value no greater than 0.10 horizontal and vertical footcandles at the site boundary and no greater than 0.01 horizontal footcandles 10 feet beyond the site boundary. Document that no more than 2% of the total initial designed fixture lumens (sum total of all fixtures on site) are emitted at an angle of 90 degrees or higher from nadir (straight down).

- ii. Site plan showing the location of all buildings and improvements for the Project, including but not limited to these: the placement of all refuse receptacles (including trash cans, dumpsters, and grease traps) and proposed screening for such receptacles; driveways and parking plans showing appropriate dimensions for vehicle turning movements on site for garbage trucks, delivery vehicles, buses, and fire trucks.
 - iii. Grading plan, including Sensitive Areas Development Plan to the extent required pursuant to Ordinance 128.
 - iv. Landscaping Plan showing species and size of plantings as well as amenities ~~including but not limited to~~ such as walkways, benches, bicycle racks, exterior light fixtures, library book drop, entrance amenities, ~~and~~ trash receptacles and other public amenities.
 - v. Storm Water Management Plan sufficient for the City to issue a Construction Site Runoff Permit pursuant to Ordinance 169.
 - vi. Storm Water Pollution Prevention Plan and application sufficient for the City to issue a Construction Site Runoff Permit pursuant to Ordinance 155.
 - vii. The granting and recording of utility plats and easements as may be reasonably sufficient for all public and private utilities and services supplying the Project as shown on the ~~A~~ approved PUD Plan, with such easements being subject to review by the City's engineering consultants for sufficiency.
 - viii. Developer shall produce to the City a water main easement agreement and corresponding plat and a sanitary sewer easement and corresponding plat approved by the City of Iowa City and in recordable form.
- b. Final Construction drawings consistent in all material respects with the approved PUD Plan showing:
- i. All final dimensions of the buildings and improvements to be included in the Project.
 - ii. All exterior building materials.
 - iii. All exterior colors.
 - iv. Other matters generally required to be shown for building permit approval.
 - v. The Developer need not include construction drawings of interior improvements intended to be built-out or finished by the owners or tenants of commercial or residential units. Such improvements will be subject to separate building permits, to the extent applicable, in accordance with standard City practices.

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- vi. Containing the utility boring specifications for storm sewer, sanitary sewer, and water main as were called out for boring on the Approved PUD Plan.
- c. The Developer will comply with City ordinances and good practices regarding fill materials and will employ a qualified geotechnical consultant to perform appropriate analysis and testing and to provide recommendations. Developer's consultant will make periodic reports on such matters to the City Engineer and/or the City's engineering consultants, as directed by the City. The City retains the right to conduct geotechnical testing, materials testing, and/or inspections and the right to enforce applicable standards, including the right to halt further construction if -the City Engineer -and/or the -City's engineering consultants conclude applicable standards are not met.
- d. The Project will be designed and built using current sustainable principles and with the intent to obtain LEED Certification. At the Construction Document phase of the Project, Developer shall submit to the City the Project's LEED Score Card demonstrating the Developer's intent to obtain LEED Certification for the Project (or the applicable portion thereof) based upon the LEED criteria existing at the time the Project's LEED Score Card is submitted to the City.
- e. The Developer and/or the Project's owners' association shall maintain any exterior public space that is shown on the PUD plan or otherwise incorporated into the Project.
- f. Upon 100% occupancy of the Project, the Metropolitan Planning Organization for Johnson County (MPO-JC) or its successor organization (~~MPO JC~~) shall conduct a traffic study of the intersection of the Project's principal entrance drive and Melrose Avenue. If the study reasonably establishes the need for traffic signage and/or signals in addition to those then in place, then the Developer (or the Aowners' association as Developer's successor) shall at its expense install such recommended signage/signals to City specifications. After such installation and the City's acceptance thereof, ~~the~~ maintenance shall become the responsibility of the City.
- g. Excluding any space in the Project occupied by the City, Developer shall not sell or lease more than 2,000 square feet of the commercial portion of the project and none of the residential portion of the project to an owner or tenant whose use will exempt the applicable unit from real estate taxes.
- h. Developer shall be responsible for payment of all costs associated with the replacement of existing traffic signals and **standard (not epoxy) street striping** at the intersection of Melrose Avenue and Sunset Street, to the extent the City Engineer concludes such replacement and striping is necessary due to the realignment of that intersection and associated construction activities.

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3. **Restrictions on Use.** Developer and the City understand that the property constituting this Project will be submitted to a horizontal property regime pursuant to Iowa Code Chapter 499B; that is, the project will be a multi-use condominium comprising commercial and residential units configured in compliance with the zoning classification. At such time as Developer prepares a condominium declaration, Developer will record such declaration in accordance with applicable laws, and it shall contain restrictions as to use; rules and regulations; owners' association ("Association") matters (including, but not limited to, articles of incorporation and bylaws); and other governing provisions required by law and typical of condominium projects of this type; all to be appurtenant to the land. As a condition for the approval of the first occupancy permit for the Project it shall be established by the Developer that the condominium declaration and accompanying documents shall have been recorded and shall include the following restrictions on the Project, which specific restrictions shall be enforceable by the City (in addition to the Association and/or unit owners) and shall not be permitted to be amended, deleted or otherwise modified without approval of the City by appropriate resolution of the City Council:

- a. Commercial uses may use outdoor sales areas within the Project only in compliance with local ordinances. This restriction applies at all times, including, but not limited to any day on which The University of Iowa plays football games in Kinnick Stadium ("Game Day"). All Game Day activities on both the commercial and residential portions of the Project shall be in compliance with City ordinances and any additional rules that may be imposed by the Association.
- b. Unless with the prior approval by Resolution of the City Council, no commercial use shall employ or have as an amenity or feature any sort of drive-through service area or hand-through service window to **pedestrians or to** motor vehicles. **DEVELOPER'S COMMENT: To our recollection, not having a pedestrian walk-through was not previously discussed. The negatives of a pedestrian pass-through are not readily apparent, and this needs to be further discussed.**
- c. Any proposed sign (whether lighted or not) associated with the advertising of any commercial use must either 1) be approved by the City Council, or 2) be in full compliance with sign covenants and restrictions applicable to the Project as may be incorporated into the Condominium Declaration and expressly approved by Resolution of the City Council.
- d. No temporary signs on or visible from the exterior of a commercial establishment will be permitted except when located in a window of the establishment filling not more than 25% of the window space and for no more than 20 business days during any calendar year. Signs indicating that a business is open or closed or hours of operation, or containing governmentally required disclosures, shall not be deemed temporary signs.

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- e. To the extent that a unit remains for rent, one unlighted "For Rent" sign no larger than three feet by three feet (excluding stand) may be placed in or on the leased unit. In connection with the initial leasing of units, the Developer may either abide by the foregoing requirement or in lieu thereof place one leasing sign no larger than ten feet by ten feet (excluding stand) within the Project.
- f. To the extent that a unit remains for sale, one unlighted "For Sale" sign no larger than three feet by three feet (excluding stand) may be placed in or on the unit for sale. In connection with the initial sale of units, the Developer may either abide by the foregoing requirement or in lieu thereof place one for sale sign no larger than ten feet by ten feet (excluding stand) within the Project.
- g. All unit owners, occupants and guests shall comply with the noise ordinances of the City and otherwise not create any noise nuisances. Additionally, no music shall be permitted to be played through exterior speakers within any outdoor commercial service areas after 9:00 P.M.p.m. on Sundays through Thursdays, or after 10:00 P.M.p.m. on Fridays and Saturdays. Any music played through exterior speakers within outdoor commercial service areas shall otherwise be in compliance with City Ordinances and any additional rules that may be imposed by the Association.
- h. Commercial uses may operate and remain open to the public between the hours of 6:00 a.m. and 10:00 p.m. on Sundays through Thursdays, and between the hours of 6:00 a.m. and 12:00 a.m. (midnight) on Fridays and Saturdays. Owners, tenants and Employees may enter upon and remain in the commercial space at other times for business purposes that do not involve the coming and going of customers or clients.
- i. Commercial uses shall be limited to those uses specifically permitted by City ordinance, now or in the future, in ~~a the multi~~Multiple-family-Family ~~commercial-Commercial~~ zone. ~~In the event such uses are modified by zoning amendment, previously existing permitted uses shall be grandfathered until such time as such use ceases to be operated for one year.~~ In the event such uses are modified by zoning amendment, previously existing permitted uses will be subject to the then applicable non-conforming use regulations of the zoning ordinance.
- j. Residential units may be occupied by a single "family" and no more than one person not a member of the family occupying the premises as part of an individual housekeeping unit. "Family" is defined for purposes of this Agreement in the same manner as it is defined by the City Ordinance 79 3(12), as now existing or hereafter amended, modified, renumbered, or substituted: "Family" is defined as one person or two or more persons related by blood, marriage, or adoption occupying a dwelling as an individual housekeeping unit.

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Comment [SEB1]: This property will be subject to the pre-existing non-conforming use provisions of the zoning ordinance, as any other.

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- k. The Developer's obligations to remove snow and ice from City sidewalks as set forth in this Agreement shall be made part of the obligations of the Association in the condominium declaration.
- l. No residential unit may be subdivided.
- m. No left turns shall be permitted from the Project directly onto Sunset Street.
- n. The Developer or Developer's successors (the Association and/or unit owners) shall be responsible in perpetuity for the removal of snow and ice on City sidewalks on the north side of Melrose Avenue from the intersection of Melrose Avenue and Sunset Street west to the Project boundary. Snow removed shall not be deposited upon City streets by may be deposited adjacent to the sidewalk upon the area within the City right-of-way All snow removed from these sidewalks, and that from any other areas of the Project shall be deposited on the Project's property or elsewhere but not upon City streets, City right-of-way, or any other property owned or controlled by the City or upon private property (other than the Project) except with the permission of the property owner.

During any period that the Developer is receiving TIF tax abatement on the Project, the Developer or the Developer's successor (or the Association) shall also be responsible, at its expense, for the removal of snow and ice on public sidewalks on the south side of Melrose Avenue from the intersection of Melrose Avenue and Sunset Street west to a point that is due south of the point of intersection of the easterly line of Birkdale Ct and the northerly line of Melrose Avenue. Snow removed shall not be deposited upon City streets by may be deposited adjacent to the sidewalk upon the area within the City right-of-way.

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~~o. The Developer and/or the owners' association shall have the right to convert green space within the Project into additional surface parking if approved by the City Council and consistent with the applicable zoning ordinances.~~

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o. No more than 25% of the residential units in the Project may at any given time be rented (as such term is defined by City Ordinance 110.02(23) as now existing or hereafter amended, modified, renumbered, or substituted) to tenants. The Association shall develop rules for enforcement of such rental restriction.

- 4. **Easements.** Before the issuance of any building permit for the Project, the Developer shall have granted to the City the following easements to be in a form approved by the City Attorney:

- a. An easement for the City's erection, maintenance, replacement and use of a bus shelter along Melrose Avenue as shown on the PUD Plan. The bus shelter shall be installed, maintained, repaired and replaced by the City.

b. An easement for any portion of the sidewalk along Melrose Avenue not within City right-of-way, which sidewalk shall be installed and maintained by the Developer or Developer's successors (Association and/or unit owners).

c. An easement for the use of the public space shown on the approved PUD Site Plan as "public plaza area", which will permit the non-exclusive use of the area by the general public according to such rules and regulations as the City may from time to time impose, provided such rules do not materially interfere with the rights of general use and access by the owners of units in the Project. The initial installation of the improvements in the easement area as shown on the approved PUD plan shall be at Developer's cost, and such improvements shall thereafter be maintained, repaired and replaced by the Developer or Developer's successors (the Association and/or unit owners), with the right to recover the cost of repair or replacement from any party damaging such improvements.

5. **Taxation of Rented Residential Portions of Project.** All rented residential portions of the project shall be taxed on their full assessed values and will not be subject to residential rollback. [DEVELOPER'S COMMENT: To our recollection this was not discussed previously and is not acceptable. The Developer's projections for increased tax have been based on the residential units being subject to the rollback. This will need to be discussed with Council. We do not believe such a provision would be consistent with Iowa law.]

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6. **Cessation of TIF for Noncompliance.** Any tax increment financing (TIF) rebate that would otherwise accrue or be paid to the benefit of Developer shall cease upon Developer's failure to comply with any term of the PUD Plan as approved; ~~the~~any TIF Agreement applicable to the Project; any building permit(s) issued regarding the Project; any occupancy permit(s) issued regarding the Project; or this Agreement. [DEVELOPER'S COMMENT: We were anticipating the substance of this language to be in the TIF Agreement, but it is OK to be in this agreement also].

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7. **Dedication of Right-of-way.** Before the issuance of any building permit for the Project, the Developer shall have dedicated to the City the portions of Melrose Avenue shown on approved PUD Plan for dedication, with such dedication documentation to be in a form approved by the City Attorney.

8. **Public Infrastructure.** Before issuance of any occupancy permit for the Project, the Developer shall have completed constructed all City street, Traffic signal and sidewalk infrastructure improvements as shown on the approved PUD Plan according to plans and specifications approved by the City's engineer, and such improvements shall have been accepted by the City.

9. **Timing of Construction.** The Project is likely to be built in phases: Phase One being the south commercial /residential building, and Phase Two being the north residential building. Once construction commences on each Phase, Developer shall use all reasonable efforts to complete construction of such phase as efficiently and in as timely a

manner as the parameters of the project permit and to be substantially completed within two years after the commencement date for such phase. In any event, construction on the Project shall commence within ten years of after the date the City approves Developer's PUD Plan Application, and if construction does not commence within that period, then the City's approval of that PUD Plan Application and this Agreement are revoked automatically without requirement of further action by City; provided, however, the City shall give the Developer (or Developer's successor, as may be then applicable) not less than twenty-four months nor more than thirty-six months advance written notice of the automatic expiration of such ten year development period.

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- 10. **Neighborhood Grocery Market.** Developer will use Developer's best commercially reasonable efforts to secure a tenant or owner agreeing to operate a neighborhood grocery market/deli within one of the commercial units within the Project.
- 11. **Payment by the Developer of Costs and Fees.** The Developer has in writing already agreed to reimburse, and has already commenced reimbursing, the City for certain costs and fees associated with Developer's PUD Application. The Developer affirms its obligations to reimburse the City as specified in the previously executed agreement.
- 12. **Binding.** This Agreement is binding on the parties hereto and their respective successors and assigns.
- 13. **Complete Agreement.** The Agreement and the Approved PUD Plan represents the complete agreement of the parties on the matters contained herein.

DATED this _____ day of _____, 2011.

CITY OF UNIVERSITY HEIGHTS, IOWA

DEVELOPER

By: _____

Louise From, Mayor

Jeffrey L. Maxwell

ATTEST: _____

Christine Anderson, City Clerk

[\[Add Acknowledgement Forms\]](#)

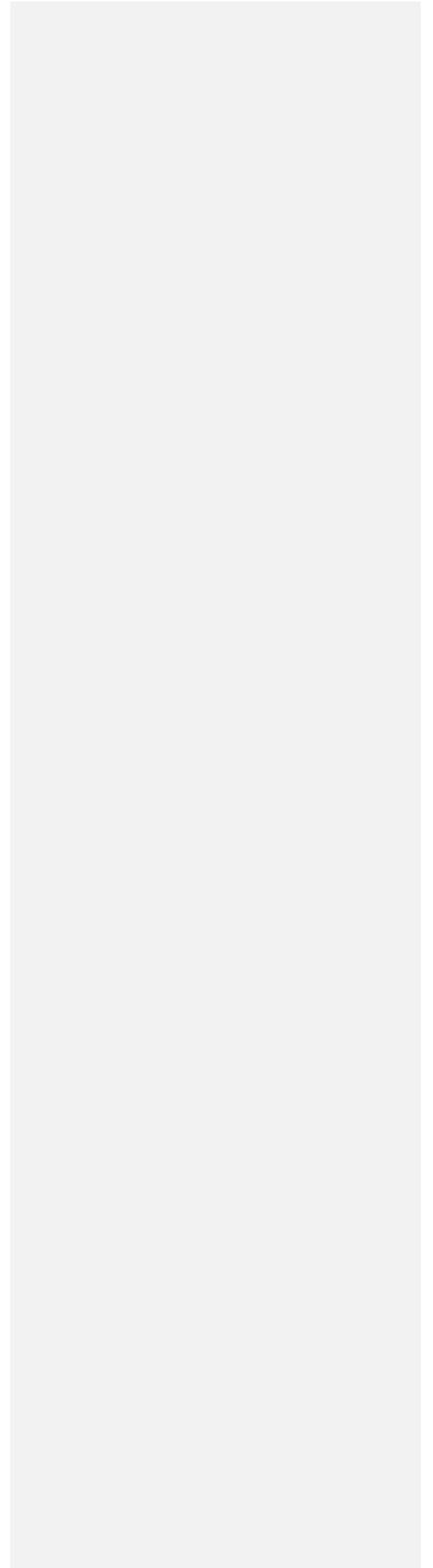


Exhibit A – Legal Description of Site for

One University Place Project

St. Andrew Parcels

Beginning at the Northeast Corner of Section 17, Township 79 North, Range 6 West of the 5th P.M.; thence North 89 degrees West along the North line of said Section 17, 402.6 feet, thence South 16 degrees East 490 feet to the Northerly line of Snook's Grove Road as now established; thence North 73 degrees East along the Northerly line of said road 291.3 feet; thence North 1 degree 40' West to the point of beginning, as shown by Plat recorded in Plat Book 4, Page 383.

and

That part of the northeast quarter of the northeast quarter of Section 17, Township 79 North, Range 6 West of the 5th P.M., described as Auditor's Parcel 96091 on plat of survey recorded in Book 38, Page 125, Plat Records of Johnson County, Iowa.

Maxwell Parcel

Auditor's Parcel 2005091 according to the Plat of Survey recorded in Book 49, Page 284, Plat Records of Johnson County, Iowa, being a portion of Outlot 1 and of Lot 238, University Heights, Second Subdivision, according to the plat thereof recorded in Book 2, Page 76, Plat Records of Johnson County, Iowa; EXCEPT beginning at the Southwest corner of Auditor's Parcel 2005091, thence North 0°00'00" East 19.48 feet along the West Line of said Auditor's Parcel (assumed bearing for this description only), thence North 74°40'39" East 8.58 feet to a point of intersection of the Westerly right-of-way line of Sunset Street, thence South 20°48'18" West 23.29 feet along said right-of-way to said point of beginning and containing 81 square feet more or less.



LEED 2009 for New Construction and Major Renovations

Project Checklist

Project Name

Date

Sustainable Sites Possible Points: 26

Y	?	N			
<input checked="" type="checkbox"/>			Prereq 1	Construction Activity Pollution Prevention	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1	Site Selection	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 2	Development Density and Community Connectivity	5
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 3	Brownfield Redevelopment	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 4.1	Alternative Transportation—Public Transportation Access	6
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 4.2	Alternative Transportation—Bicycle Storage and Changing Rooms	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 4.3	Alternative Transportation—Low-Emitting and Fuel-Efficient Vehicles	3
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 4.4	Alternative Transportation—Parking Capacity	2
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 5.1	Site Development—Protect or Restore Habitat	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 5.2	Site Development—Maximize Open Space	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 6.1	Stormwater Design—Quantity Control	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 6.2	Stormwater Design—Quality Control	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 7.1	Heat Island Effect—Non-roof	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 7.2	Heat Island Effect—Roof	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 8	Light Pollution Reduction	1

Water Efficiency Possible Points: 10

Y	?	N			
<input checked="" type="checkbox"/>			Prereq 1	Water Use Reduction—20% Reduction	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1	Water Efficient Landscaping	2 to 4
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 2	Innovative Wastewater Technologies	2
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 3	Water Use Reduction	2 to 4

Energy and Atmosphere Possible Points: 35

Y	?	N			
<input checked="" type="checkbox"/>			Prereq 1	Fundamental Commissioning of Building Energy Systems	
<input checked="" type="checkbox"/>			Prereq 2	Minimum Energy Performance	
<input checked="" type="checkbox"/>			Prereq 3	Fundamental Refrigerant Management	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1	Optimize Energy Performance	1 to 19
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 2	On-Site Renewable Energy	1 to 7
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 3	Enhanced Commissioning	2
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 4	Enhanced Refrigerant Management	2
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 5	Measurement and Verification	3
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 6	Green Power	2

Materials and Resources Possible Points: 14

Y	?	N			
<input checked="" type="checkbox"/>			Prereq 1	Storage and Collection of Recyclables	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1.1	Building Reuse—Maintain Existing Walls, Floors, and Roof	1 to 3
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1.2	Building Reuse—Maintain 50% of Interior Non-Structural Elements	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 2	Construction Waste Management	1 to 2
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 3	Materials Reuse	1 to 2

Materials and Resources, Continued

Y	?	N			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 4	Recycled Content	1 to 2
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 5	Regional Materials	1 to 2
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 6	Rapidly Renewable Materials	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 7	Certified Wood	1

Indoor Environmental Quality Possible Points: 15

Y	?	N			
<input checked="" type="checkbox"/>			Prereq 1	Minimum Indoor Air Quality Performance	
<input checked="" type="checkbox"/>			Prereq 2	Environmental Tobacco Smoke (ETS) Control	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1	Outdoor Air Delivery Monitoring	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 2	Increased Ventilation	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 3.1	Construction IAQ Management Plan—During Construction	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 3.2	Construction IAQ Management Plan—Before Occupancy	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 4.1	Low-Emitting Materials—Adhesives and Sealants	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 4.2	Low-Emitting Materials—Paints and Coatings	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 4.3	Low-Emitting Materials—Flooring Systems	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 4.4	Low-Emitting Materials—Composite Wood and Agrifiber Products	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 5	Indoor Chemical and Pollutant Source Control	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 6.1	Controllability of Systems—Lighting	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 6.2	Controllability of Systems—Thermal Comfort	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 7.1	Thermal Comfort—Design	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 7.2	Thermal Comfort—Verification	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 8.1	Daylight and Views—Daylight	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 8.2	Daylight and Views—Views	1

Innovation and Design Process Possible Points: 6

Y	?	N			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1.1	Innovation in Design: Specific Title	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1.2	Innovation in Design: Specific Title	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1.3	Innovation in Design: Specific Title	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1.4	Innovation in Design: Specific Title	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1.5	Innovation in Design: Specific Title	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 2	LEED Accredited Professional	1

Regional Priority Credits Possible Points: 4

Y	?	N			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1.1	Regional Priority: Specific Credit	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1.2	Regional Priority: Specific Credit	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1.3	Regional Priority: Specific Credit	1
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit 1.4	Regional Priority: Specific Credit	1

Total Possible Points: 110

Certified 40 to 49 points Silver 50 to 59 points Gold 60 to 79 points Platinum 80 to 110

RESOLUTION NO. 11-14

RESOLUTION ADOPTING AND ACCEPTING THE SLOPE CLASSIFICATIONS FOR ONE UNIVERSITY PLACE AS SHOWN IN SHEET C-103 (REVISED 8/4/11), A PART OF THE PUD APPLICATION FOR ONE UNIVERSITY PLACE.

WHEREAS, University Heights Ordinance No. 128 restricts development on certain sensitive areas depending upon the slope of that property; and

WHEREAS, the Multiple-Family Commercial PUD Application submitted by Jeff Maxwell for One University Place includes an "Existing Conditions Plan and Sensitive Areas Development Plan", Sheet C-103 (Revised 8/4/11) of the application; and

WHEREAS, the slope classifications and designations set forth on Sheet C-103 (Revised 8/4/11) have been determined by the City Engineer to be accurate and in accordance with Ordinance No. 128,

NOW, THEREFORE, BE IT RESOLVED by the City of University Heights, Iowa, that the slope classifications and designations set forth on Sheet C-103 (Revised 8/4/11) of the Multiple-Family Commercial PUD Application submitted by Jeff Maxwell for One University Place are hereby adopted and approved. This resolution does not constitute approval of the Sensitive Areas Site Plan or approval of the Development and Grading Plan or adoption of the findings required for development on Steep, Critical, and Protected Slopes, all as specified and required by Ordinance No. 128(3) before development may occur.

Upon motion by _____, and seconded by _____, the vote was as follows:

	AYES:	NAYS	ABSENT
Haverkamp	_____	_____	_____
Hopson	_____	_____	_____
Laverman	_____	_____	_____
McGrath	_____	_____	_____
Yeggy	_____	_____	_____

Upon Roll Call thus recorded, the Resolution is declared adopted this 13th day of September, 2011.

Louise From, Mayor
City of University Heights

ATTEST:

Christine M. Anderson, City Clerk

September 27, 2011 Special Meeting – City Attorney's Report

1. Rules for Council Meetings.

- Brennan inquired about the procedure by which the Council could establish rules governing the conduct of its meetings. Iowa law vests the Council with discretion to “determine its own rules”. Iowa Code § 372.13(5).
- The Council previously adopted Robert’s Rules of Order (Newly Revised) as its parliamentary authority. Ordinance 126.
- Regarding other matters, such as meeting length, taking breaks during meetings, requiring written submission of action items 24 hours in advance of meetings, etc., the Council has discretion to adopt the rules it deems appropriate. I suggest that the Council consider and discuss the types of meeting rules it may wish to establish.
- The Council should give careful consideration to how forceful it intends the rules to be and how easily they may be changed. If the rules are set forth in an ordinance, they may only be rescinded or changed by ordinance, which would require consideration and adoption at three meetings. If the rules are established by resolution, then they may be rescinded or changed by resolution (one vote at one meeting).
- At your direction, I am happy to put together an ordinance or a resolution establishing meeting rules.

2. Minutes of Council Meetings.

- Brennan also asked about the legal requirements for publishing minutes of the Council’s meetings. Specifically, he asked whether the meetings could be recorded and made available as an indexed audio file, with hard-copy minutes limited to formal action items. The thought was that adopting such a procedure would save the Clerk’s time and reduce the size of the minutes published in the Press-Citizen, both resulting in cost saving for the City.
- Iowa law requires that City Council’s keep minutes of their meetings, with the following information:
 - Meeting date, time, and place.
 - Members present.
 - Action taken, including the result of each vote and how each member voted.
 - Total financial expenditure from each City fund.

- So, the law doesn't require a summary of discussion or debate, a listing of items mentioned during public input, a synopsis of legal reports, etc.
- The cost of publishing is set by state law and works out to about \$45.00 per 8 ½ x 11 page of minutes. I have not done an exhaustive review of the Council's minutes, but I think they probably run about four or five pages a month, for a publication cost of about \$200.00. If the Council shortened the minutes to only the information required by law, I suspect it could be condensed to about two pages, so the cost would only be about \$90.00 per meeting.
- With regard to the indexed audio recording, Johnson County uses software called "Soniclear®".
 - The program permits someone to label different sections of the meeting to correspond to the time-stamp on the recording. So, for example, someone could insert "Discussion of Street Repairs – 8:35" so that someone wishing to listen to that portion of the meeting could easily access that information.
 - The Soniclear® software costs between \$1,000.00 and \$2,000.00, depending upon the package you purchase. The City would also need a laptop so that narrative information could be added to the recording.
 - I have no idea whether Johnson County likes the Soniclear® system, but it would be pretty easy to find out.
- Iowa law does not require that the Council record its meetings (except closed meetings, which is not the topic of Brennan's inquiry). If the Council desires to record meetings, the recordings could be done by digital recording, then stored as .WAV files or something for public access. I think the Soniclear® product adds the indexing feature that the raw recording would lack.
- In summary, the Council is not required to publish quite a bit of the information that it has been including in its minutes. If the Council desires to abbreviate the minutes, it may do so, whether or not it makes audio recordings and makes them available for public listening.

3. One University Place – Remaining Steps (Repeat from Legal Report for September 13, 2011 Meeting).

- Jeff Maxwell’s lawyer, Tom Gelman, inquired about what items and procedures remained to be completed for the project to be approved.
- Here is what I outlined for Mr. Gelman:
 1. Council must vote on the PUD Plan Application. No further public hearing is required. Only one affirmative majority vote is required for passage.
 2. Council must vote on the PUD Development Agreement. No public hearing is required. Only one affirmative majority vote is required for passage.
 3. Council must complete the TIF process. I defer to John Danos on those particulars. My notes reflect that John has said before that, at a minimum, the process requires 3 Council meetings, 2 public hearings, and 1 consultation meeting with other taxing authorities (community college, etc.). John said the council meetings may be ‘special’ meetings, but the process requires one month ‘start to finish’ between the first and second meetings.

4. One University Place - PUD Plan Application (Repeat from Legal Report for September 13, 2011 Meeting).

- Revised plans were distributed previously.
- Council will need to consider various reports from the City Engineer and MPO-JC, as well as public input and any other relevant information, to determine whether the Plan Application is acceptable or whether additional or different information is required.

5. One University Place - PUD Development Agreement (Repeat from Legal Report for September 13, 2011 Meeting).

- I am attaching the latest redline version of the development agreement that I received from Tom Gelman.
- I am also attaching Mr. Gelman’s email, which sets forth an explanation of the various changes and items remaining to be addressed. For ease of reference, the substance of Mr. Gelman’s email is copied here:
 - The attached working document shows changes to the draft circulated before the work session.

- The changes that I made are shown in red; those that Mr. Gelman made are shown in blue.
- Additional items are highlighted in yellow. These are items that require additional discussion/clarification by Council. Mr. Gelman inserted comments regarding these items. I will do so, as well, but not until tomorrow.
- Mr. Gelman has also made some suggested clarifications/additions highlighted in blue.
- The minutes from the August 23, 2011, work session include my notes of what the Council discussed and reached consensus on. The Council certainly should review that to make sure that the Council's intentions are accurately represented.
- Similarly, if you desire to change things from what was discussed at the work session, you should point that out.
- I particularly draw your attention to paragraph 3 of the agreement, which lists a variety of items to be included in the condominium documents. These items cannot be changed by the condominium owners (or the association) without the Council's approval. If there are additional items the Council desires to include in this list, those items should be noted.

6. One University Place – Slope Classifications (Repeat from Legal Report for September 13, 2011 Meeting). I am attaching Resolution No. 11-14, which adopts the slope classifications set forth in Sheet C-103 (Revised 9/1/11), which is part of Jeff Maxwell's Multiple-Family Commercial PUD Application. The classifications comport with Ordinance No. 128. This resolution does not approve construction or development on these slopes; it just accepts the classifications, which Josiah has approved. After appropriate consideration, the Council still would need to approve a Sensitive Areas Site Plan and a Development and Grading Plan before development could occur on the Steep and Critical Slopes shown on Sheet C-103. The Council also would still need to make the particular findings required by Ordinance No. 128(3)(C) before development could occur on the Protected Slopes shown on Sheet C-103.

September 2011 - Mayor Report

The 6th Annual Chautauqua was held Sunday, August 28th from 3:00-5:00 on Paul Moore's lot. I want to thank co-chairs **Pat Yeggy & Mike Haverkamp** who assisted me to make this event a success!!!

Special Thanks to **Shive Hattery** for sponsoring the event for the Sixth year!!

A BIG thank you to these volunteers who helped in many different ways: **Paul Moore, David Duncan, Harold Plate, Jim Lane, John McLure, Kevin & Lisa Perez, Eleanor Marshall, Laurel Haverkamp, Sean Besera and the Boy Scouts of Troop 212, Lori Enloe, Stuart Rosebrook, UHPD Ron Fort, Matt Fort, & the Coralville Fire Dept.**

League of Women Voters of Johnson County had their annual reception for local elected officials on August 22. Rosanne Hopson and I attended. I gave the highlights of what is happening in our city over the past year. I thanked the League for once again including University Heights.

The League of Women Voters of Johnson County Education Fund is sponsoring a 7 part series of Community Conversations. The first is Sept. 16th "The Mythology of the American Constitution" Speaker: Professor Todd Pettys, Associate Dean, University of Iowa College of Law. Location: Iowa City Public Library 7 to 9 pm. The second is Oct. 11th "What's the Bill if We Don't Get it Right? "Individual Freedom and the Constitution" Speaker, Ben Stone, Executive Director, ACLU Iowa. Location: Iowa City Public Library 7 to 9 pm. The third is Nov. 2nd "Citizens United v The Federal Elections Commission" Speaker: Randy Bezanson, David H. Vernon, Professor of Law, University of Iowa College of Law. Location: Coralville Public Library 7 to 9 pm.

Mike Haverkamp was appointed to the Transit committee of MPO-JC.

Ed Fischer was appointed as an At Large member by the Urbanized Area Policy Board.

Thank you Mike and Ed for volunteering and representing University Heights!!

Kris Ackerson of MPO-JC is asking Johnson County cities interested in putting their road work/closures on a special facebook page. Mike Haverkamp, city webmaster, is designated as the University Heights "poster".

From: "Tom Gelman" <gelman@ptmlaw.com> Subject: RE: OUP Development Agreement
Date: Sun, September 11, 2011 12:55 pm To: "Steve Ballard" <ballard@lefflaw.com> Cc:
"Jeff Maxwell" <jmaxwell@maxwellconstructioninc.com>

Steve, I have attached an updated redlined version of the Development Agreement. I have incorporated all minor corrections and adjustments you suggested. All were helpful, thanks. I have left showing the substantive adjustments that you (red) and I (blue) have made to the pre-work session draft. There is highlighted in yellow those few remaining items from your proposed modifications that require a bit more discussion and resolution. For each of the three yellow highlighted sections there is brief comment in brackets. In response to your adjustments, there are a few clarifications/additions being suggested as highlighted in blue.

While Jeff Maxwell reserves the right to request further modifications, we believe the Development Agreement in this form should be provided to Council for review, discussion and action at the upcoming Council meeting. Thanks. Tom

Thomas H. Gelman
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From: Steve Ballard [<mailto:ballard@lefflaw.com>]
Sent: Friday, September 09, 2011 4:08 PM
To: Tom Gelman
Subject: OUP Development Agreement

Tom,

Here's my redline version. The City, too, reserves the opportunity to review this document and make additional changes. I will send this

redline version to the Council so they have something to chew on over the weekend. If you and I discuss and make further changes, etc., before Tuesday, I will supplement.

I believe the following additional steps remain in the PUD Application process:

* Council must vote on the PUD Plan Application. No public hearing is required. Only one affirmative vote is required for passage.

* Council must vote on the PUD Development Agreement. No public hearing is required. Only one affirmative vote is required for passage.

* Council must complete the TIF process. I defer to John Danos on those particulars. John has said before that, at a 'bare minimum', the process requires 3 council meetings, 2 public hearings, and 1 consultation meeting with other taxing authorities (community college, etc.). John said the council meetings may be 'special' meetings, but the process requires (or he needs?) one month 'start to finish' between the first and second meetings.

Steven E. Ballard

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August 23, 2011

Proceedings of the City Council of University Heights, Iowa, held at the St. Andrew Presbyterian Church, 1300 Melrose Ave., subject to approval by the Council at a subsequent meeting. ALL VOTES ARE UNANIMOUS UNLESS OTHERWISE STATED.

WORK SESSION MEETING

Mayor From called the August 23, 2011 work session meeting of the University Heights City Council to order at 7:09 p.m. Mayor From thanked the St. Andrew Presbyterian Church for allowing the meeting to be held at the church.

Present: Mayor From. Council Members Mike Haverkamp, Rosanne Hopson, Stan Laverman, Brennan McGrath, and Pat Yeggy. Staff present: Attorney Ballard and Clerk Anderson. Also present were Ron Amelon, Pat Bauer, Carolyn Brown, Dennis Craven, John Danos (via phone), Ann Dudler, Andy Dudler, Linda Fincham, Tom Gelman, Ann Grossheim, Alice Haugen, Eunice Hunzelman, Russ Hunzelman, Catherine Lane, Jim Lane, Chris Luzzie, Jeff Maxwell, Kevin Monson, Scott Pantel, Kent Ralston, Dell Richard, Mary Schmidt, Rich Schmidt, Jane Swails, Jinx Tracy, Larry Wilson, Amanda Whitmer, John Yapp, Adam Zimmerman, and Jerry Zimmerman.

Maxwell Revised TIF Proposal: Dennis Craven, financial advisor for the Maxwell development, distributed revised TIF project reports to the council. Since the Johnson County Board of Supervisors declined to participate in TIF, scope modifications have been made to the project. Both building's footprints have been reduced by 30 feet; the east side of the north building and west side of the south building. The number of units is reduced from 79 to 69. The developers still anticipate that owners will buy several units to combine into one unit. They propose not realigning the Melrose/Sunset intersection.

The previous TIF proposal was for \$8 million but now the proposal is for \$6.5 million. A 10% allocation of incremental taxes will flow to the city. The size of the community center square footage is reduced from 4,000 square feet to 2,500 square feet, and the community center will be built out at no cost to the city. The incentive for a market space or grocery store has been removed but the developer will still actively seek some type of grocery store for the site.

Annual property tax collection for the city is reduced as a result of the decrease in condo units and smaller commercial space. Projected annual tax revenue, after the TIF period, has decrease from \$288,000 to \$256,000 for the city. Council member Haverkamp inquired what the TIF period would be under the revised proposal; Craven stated he estimates it would be slightly over 10 "collection" years.

Council member McGrath asked what the changes were to the finish, quality or design in the revised proposal. Kevin Monson, of Neumann Monson Architects, stated that take a slice out of the buildings "is a major structural change"; he also anticipates that the same finishes will be used on the outside of both buildings. With no alignment change to Melrose/Sunset, they propose installing a wider sidewalk used only for fire and emergency vehicles.

McGrath asked if it was ever considered reducing the heights of the two buildings; Monson stated the development has been reduced from the original proposal and by taking "slices" out of the building; this makes the units and parking proportional. It is anticipated that the number of units will be reduced by 12 due to combining smaller units into a larger condo. McGrath commented that the developer heard the message about the need to reduce the density but he had hoped for a further reduced in the heights of the buildings. Monson stated that based on the model, the development "nestles very well" between the trees and the ravine.

John Danos (on speakerphone), the city's TIF advisor, asked for clarification on the 80% reaffirmation annually from the city. Craven replied that the concept was inspired by Danos, and that the city would reaffirm a rolling commitment of 80% towards the project as incremental taxes increased over the course of the TIF. Craven stated he was unsure how this would be handled procedurally.

Council member Yeggy asked Hopson what she would value the church property at since she disagrees with the developer's purchase price. Hopson replied that she agrees with the appraised value of \$2.2 million. Yeggy disagreed and felt that Maxwell was paying appropriately for the land. Yeggy cited the \$5.7 million paid by the University of Iowa for the Athletic Club on Melrose Avenue.

Council member Laverman inquired of the council if “they were comfortable” with the new proposal. Hopson stated that if the height was further lowered that would be good.

Laverman commented that not having the Sunset intersection realigned was an issue and he is concerned about the traffic flow on Melrose Avenue. Council member Haverkamp commented that both Hopson and McGrath had previously stated that the intersection was not an important factor for them; he also asked where the compromise on their part was for the developer. Haverkamp stated “a true compromise is where both sides give something”.

Haverkamp asked John Yapp, Executive Director of MPOJC, given the proposal change, how would that affect the number of cars entering and exiting the development. Yapp commented that there are two peak hours of traffic each day, accounting for 25% of the total traffic. 75% of the traffic is spread out over the course of the day. Yapp did comment that with the removal of the second exit, there will be higher density at one exit and there will be congestion for vehicles wanting to turn left onto Melrose Avenue. One possibility is to restrict left turns onto Melrose Avenue.

Council member Laverman stated that the project has lost value for the community without the realignment of Melrose/Sunset. Laverman also has concerns of traffic using Grand Avenue as a cut-through and that a median would have helped address that concern. Haverkamp stated he too liked the redesigned Sunset Street intersection and felt it was designed very well. Council member Yeggy also was very reluctant to “give up” the redesigned intersection in the new proposal.

Laverman said that his support is contingent on the realignment of Sunset Street. Hopson stated that she does not like two sets of traffic lights so close together on Melrose Avenue but does not want traffic cutting through on Grand Avenue either. McGrath would like to see additional traffic information from MPOJC before making any type of decision. He stated he favors the realignment but not the development.

Council member Haverkamp said, for the sake of compromise, would the council agree to the terms of a \$6.5 million TIF but include the realignment of Sunset Street. Council members Yeggy and Laverman agreed that would be acceptable to them. Attorney Gelman, in consultation with the developer and his team, agreed to the council’s proposal to include the realignment of the intersection. He asked the council ask John Danos to prepare the TIF documents. The council directed Mr. Danos to begin drafting a TIF proposal for their September meeting.

Council member Hopson asked what the ramifications would be if future city councils did not approve TIF appropriations to the developer. Craven replied that he hoped future councils would act on good faith. Danos stated that the city would not be in breach of the contract; contracts usually have language included that it is the intention that payments will occur but not paying would not constitute a legal default for the city.

Discussion of the Development Agreement: Tom Gelman lead the discussion with council of the 34 points of the development agreement. (see attached)

The meeting was adjourned by **unanimous consent at 12:36 p.m.**

Attest: Christine M. Anderson, City Clerk

Approved: Louise From, Mayor

At its work session August 23, 2011, the University Heights City Council considered each of 34 separately numbered points from the City Attorney's prior memorandum. A draft development agreement had been circulated previously. Council's discussion of and consensus about the following points is shown in **bold**.

1. Parties to Agreement. The Council should consider whether St. Andrew Presbyterian Church should be a party to the Development Agreement. Mr. Maxwell, as owner of a portion of the property proposed for development and as the proposed developer presently is a party in the draft version. The Council may desire that the church also undertake the commitments set forth in the Agreement.

Consensus: Leave draft as is; do not require church to be a party.

2. Light Restrictions. The Council should consider the particulars of the light restrictions and provisions to avoid light "spillage" from the development and whether these provisions are sufficient.

Consensus: Leave draft as is; item is adequately addressed.

3. Exterior Amenities. The Council may desire that certain exterior amenities, perhaps including benches, book drop, and bicycle racks be shown and specified in site or building plans.

Consensus: Require approval of landscaping plan as part of development agreement and address particular amenities when that plan is presented and approved.

4. Boring Plans. The Council should consider whether to require boring plans showing that all utilities or other implements to be constructed on the property shall be bored-in and not placed by way of open excavation or otherwise.

Consensus: Confirm that boring specifications and regulations are adequately addressed in PUD Plan Application documents; Development Agreement does not need to address separately.

Also, though not part of the City Attorney's memo, confirm that PUD Plan Application provides that additional manhole(s) will be craned in.

5. Fill Material. The Council should consider whether to require that all fill on the project be observed by an independent monitor who shall have authority to order stoppage of work without notice if work is not proceeding in accordance with the monitor's direction. The Council

could request that all costs associated with such monitoring be the sole and exclusive responsibility of developer.

Consensus: Follow Mike Haverkamp's suggestion. Require developer to retain geotechnical consultant and require consultant to file regular reports with City Engineer. Provide that City also may retain a geotechnical consultant to oversee project and that work may be halted if standards are not met.

6. Changes to Condominium Documents. The Council should consider whether to require that any substantive changes to the condominium documents that will be drafted must be approved by the Council to be effective. The Council particularly may wish to have such a requirement concerning changes to the rules and regulations governing the development.

Consensus: Draft Agreement provides that many provisions of condominium documents may not be changed without Council approval. Council should consult para. 3(a) – 3(o). Address such things as noise limits and LED lights in signs by ordinance, which could control entire City, not just development.

7. Rental/Leasing of Residential Units. The Council should decide whether it is agreeable to permitting some or all of the residential units in the development to be rented or leased. The Council may propose that no units be leased; or that only units in one building may be leased; or that no more than a specified number of units may be leased; or some other description of limits on leasing.

Consensus: Add provision that no more than 25% of residential units may be rented.

8. Traffic Considerations. The Council should consider whether to prohibit left turns from the property onto Sunset Street.

Consensus: Leave draft as is; confirm that PUD Plan Application adequately addresses this item.

9. Law Enforcement on Property. The Council should consider requesting that the developer and those coming after the developer (owners of condominium units) agree that the University Heights Police Department may come upon the property in perpetuity to enforce all traffic signage and regulations on the property.

Consensus: City Attorney to confirm signage on private property regulating traffic entry onto city streets may be enforced by police department.

10. LEED Certification. The Council should consider whether to require that the development's plans, specifications, and construction meet or exceed the design and build elements necessary for the entirety of the project to be qualified as Certified/Silver/Gold/Platinum according to the Leadership in Energy & Environmental Design 2009 scale. The Development Agreement could provide that no building or occupancy permit shall be issued until such certification is documented to the satisfaction of the Council.

Consensus: Require submission of LEED Score Card at Construction Document Phase of project showing developer's intent to pursue particular LEED certification.

11. Maintenance of Public Space. The Council should consider whether to require the developer to maintain any public space (fountain, atrium, etc.) even if the space is open and available for public use and even if the Council sets restrictions concerning hours and uses of such space.

Consensus: Leave draft as is; item is adequately addressed.

12. Snow Removal. The Council should consider whether to require the developer to be responsible in perpetuity for the removal of snow and ice on certain City sidewalks, including those on the north and south sides of Melrose Avenue beginning at Sunset Street and proceeding west to a specified distance. The sidewalk on the south of Melrose Avenue will be closer to the street, from what I understand of the plans, which may lead to additional deposits of snow and ice from plows clearing the street.

Consensus: Follow Mike Haverkamp's suggestion. Developer will remove snow from sidewalks on north side of Melrose from intersection of Melrose and Sunset west to property line. Developer will remove snow from sidewalks on south side of Melrose from intersection of Melrose and Sunset west to a point south of Birkdale Court, where the Melrose pavement tapers.

13. Restrictions on Commercial Uses/Hours of Operation. The Council should consider the types of businesses that are or are not permitted in the commercial portion of the development. Ordinance 79(6)(f)(2)(b) provides a broad list of permitted uses. The Council may wish to further refine or define those uses and further address hours of operation.

Consensus: Leave draft as is regarding hours of operation. Follow Mike Haverkamp's suggestion to prohibit music through exterior speakers after 9:00 p.m. Sundays-Thursdays and after 10:00 p.m. Fridays-Saturdays. Address other, broader noise issues by ordinance, which could control entire City, not just development.

14. Outdoor Game Day Sales. The Council may wish to prohibit any outdoor sales on Hawkeye home game days.

Consensus: Leave draft as is; item is adequately addressed by existing ordinances.

15. Timing of Construction. The Council may wish to provide that construction on the proposed development must commence by a certain date and be completed by a certain date.

Consensus: Leave draft as is; consider penalty if construction deadlines are not met.

16. Grocery Store/Market. The Council should consider whether it desires to require that a portion of the commercial space be used for a grocery store/market.

Consensus: Leave draft as is.

17. Parking. The Council should consider whether the proposed parking is sufficient for the development and the types of commercial uses contemplated.

Consensus: Leave draft as is.

18. Limit Liquor Licenses. The Council may wish to consider limiting the number of liquor licenses or beer permits that may be issued for businesses located at the development. Doing so may be another measure useful to restricting permitted uses. The point may be that one restaurant would be great but 3 is too many.

Consensus: Leave draft as is; regulate by ordinance, which could control entire City, not just development

19. "Land Banking" Green Space. MPO-JC has raised the possibility of the Council requiring that certain green space be kept available for conversion into surface parking if some specified triggering event occurs in the future. The triggering event might be something like (i) a future finding and Resolution by the Council that parking is inadequate

or (ii) the establishment of a certain number of a certain types of businesses at the proposed development (e.g., if there's 3 restaurants, the green space becomes or may become parking).

Consensus: Remove draft para. 3(o), giving Association the right to convert green space to parking if approved by Council and consistent with zoning ordinance.

20. TIF. Does the Council desire to condition approval of the PUD Plan Application on establishing the requested TIF? Are there other TIF points the Council would like to address in the Development Agreement?

Consensus: Leave draft as is; address TIF issues in TIF agreement.

21. Conditioning PUD Approval on Land Sale Timely Construction. The Council may wish to consider provisions that the PUD Plan Application approval terminates if St. Andrew Presbyterian Church votes not to sell the property or if the project is not completed in a given time. This issue also may be addressed separately in a provision that requires commencement and completion by certain dates.

Consensus: Add provision that construction will begin within 10 years of PUD approval or such approval is automatically revoked.

22. Additional Traffic Signal on Melrose Avenue. The Council may wish to consider requiring that an additional traffic signal be installed on Melrose Avenue at the developer's expense. The Council may wish to say that such a light would be required only if and when some future event occurs (like traffic times are decreased or car counts increase to specified levels or once the second building is built). MPO-JC has provided information concerning traffic patterns and the effects of an additional signal.

Consensus: Add provision that need for traffic signal will be evaluated by MPO-JC once project is fully occupied. If additional signal is needed, developer or association will pay the initial cost.

Not part of City Attorney's memo, but City Engineer recommends addressing whether developer will be required to pay construction and street striping costs associated with realignment of Melrose-Sunset intersection.

23. Limited Traffic Signal Operation. The Council may wish to consider whether to only operate an additional traffic signal on Melrose Avenue at specific times (e.g., 6:00 a.m. – 9:00 a.m. and 4:00 p.m. – 7:00

p.m.). If there is interest in pursuing that notion, I suggest that MPO-JC be asked to evaluate this item from a traffic flow and safety standpoint.

Consensus: Leave draft as is; do not need to address.

24. Design of Sunset Street Exit to Protect Ravine. The Council may wish to request a design of the Sunset Street exit that impacts the ravine to the least extent possible.

Consensus: Leave draft as is; address concerns through PUD Plan Application approval.

25. Number of Residential Rentals. If residential units will be permitted to be leased, does the Council desire to limit the number?

Consensus: No more than 25% of residential units may be rented; see #7 above.

26. OUP Entrance Design Elements. The Council may wish to require approval of specific plans for the entrance to the proposed development. Different ideas have been suggested – a fountain, a community common area, a sculpture. The Council may wish to have a say in how this area is presented.

Consensus: Leave draft as is; require approval of landscaping plan as part of development agreement and address particular amenities when that plan is presented and approved; see #3 above.

27. Left Turns onto Melrose Avenue. A provision regarding traffic patterns and allowable turns may be included, consistent with the recommendations of MPO-JC and the infrastructure design that is discussed and approved as part of the overall PUD Plan Application.

Consensus: Leave draft as is; confirm that PUD Plan Application adequately addresses this item.

28. Commitment to Resolve Future Infrastructure Issues. The Council may wish to require that the developer (and the condominium owners association) be responsible for resolving any future sanitary sewer issues that arise in the future. I believe this comment emanated from a concern that the proposed sewer plan might prove to be inadequate. Perhaps the Council desires to investigate that issue further.

Consensus: Leave draft as is; require plats and easements for utilities; confirm that PUD Plan Application adequately addresses this item.

29. Restrictions on Signs. The Council may wish to consider specific limitations and restrictions on signage permitted at the development. For example, size restrictions, prohibiting flashing signs or those whose messages change, etc.

Consensus: Add provision that no signs may project out from buildings.

30. Ravine Stability During Construction. The Council may wish to require specific testing or oversight during construction to confirm that construction activity itself is not harmful to the ravine.

Consensus: Leave draft as is.

31. No Preference in Awarding Infrastructure Contracts. The Council may wish to indicate in the Development Agreement that any contracts for the construction of public infrastructure will not necessarily be awarded to Jeff Maxwell of his company just because he is the developer. It may be that the Council simply requires installation of the improvements (to city standards and specifications) and leaves it to the developer to retain appropriate contractors. In that event, the Council would not be awarding a contract and may have little input into contractor selection.

Consensus: Leave draft as is; developer will select subcontractors.

32. Restriction on Transfer to Tax-Exempt Entity. The Council may wish to prohibit any sale or transfer of all or part of the proposed development to tax-exempt entities. Some such entities (like the church, for example) do not pay property taxes. To the extent portions of the proposed development are transferred to such an entity, the TIF component, if there is one, of the development may be affected.

Consensus: Add provision that no more than 2,000 square feet of commercial feet (approximately 10% of total) may be owned or used by entity such that property taxes would not be payable.

33. Restriction on Transfer to Entities Not Owned or Controlled by Jeff Maxwell. The Council may wish to restrict the transfer or assignment of the Development Agreement to persons other than Jeff Maxwell or to entities not owned or controlled by him. Similarly, the Council may wish to condition its approval of the PUD Application on continued

ownership by Mr. Maxwell or an entity owned or controlled by him. The thought behind such restrictions and conditions is that the qualifications and identity of the person/group proposing redevelopment (here Mr. Maxwell) are important to the Council and were significant reasons for entering into the Development Agreement (if it is entered into) and for approving the PUD Application (if it is approved).

Consensus: Leave as is; no restriction on transfer.

34. Statement of Qualifications of Developer. The Council may wish to require that Jeff Maxwell provide a statement as to his qualifications and background for undertaking and completing a project such as the one proposed. This information may be important to the Council in determining whether to enter into a Development Agreement or to approve the PUD Application. The information sought could include such things as the identity of all owners and directors of any corporate or other legal entity involved in ownership or the development; financial references and background; other projects that have been developed; D/B/As or other names or entities by or through which the developer has conducted business in the past and present; and financial resources available for developer to complete financing of the proposed development. I would be happy to prepare a list of such requirements at the Council's direction.

Consensus: No consensus reached.

MEMORANDUM

TO: University Heights, Mayor, Council, and Staff
FROM: Josiah Bilskemper, P.E.
DATE: September 12, 2011
RE: City Engineer's Report

(1) Melrose Avenue Wide Sidewalk

- a. One final reimbursement request will be made, as the DOT has been withholding a 5% retainage on all payments made back to the city. This retainage amount is \$14,498.89. This request can be submitted once Iowa DOT has contacted us and indicated final review of all paperwork submitted for the project is complete.

(2) Sunset Street Wide Sidewalk

- a. Iowa DOT Funding Request has been submitted. Awaiting confirmation from Iowa DOT on authorization to proceed with consultant negotiations. Several messages have been left requesting status of this review. We hope to get an answer prior to the meeting.

(3) Intersection Reconstruction – George Street and Koser Avenue

- a. Survey work of the intersection area has been completed. Construction plans have been drafted laying out the area to be reconstructed.
- b. The approved FY11-12 budget included an estimate of \$32,000 for this project. Based on the survey drawings, our latest opinion of construction cost is approximately \$26,000. This current cost opinion is below the threshold that requires the city to go through the public bidding process (less than \$40,000 for cities with population of 50,000 or less); therefore an informal procedure may be used to obtain a contractor to complete the work. The advantage of the informal bidding procedure would be accelerated time schedule to get the contractor selected and the work underway, as well as less administrative effort with regard to the full public bidding process.
- c. However, under the “informal procedure”, there is still a requirement for a city council to pass a resolution approving any expenditure of \$25,000 or more for a public improvement project. We have talked with Steve Ballard and he has recommended any resolution specify a limit on the funding authorized, and to pick a safe amount over the estimate. This makes sense in that it provides a cushion based on contractor quotes, and allows the city to respond to any issues during construction that may warrant additional work needing to be completed (i.e. replacing an extra street panel, replace a section of storm sewer pipe that turns out to be deteriorate once uncovered, etc.)
- d. If the informal procedure is something the council wishes to pursue, a resolution has been placed on the agenda for tomorrow that would approve expenditures of up to \$35,000 for this project. If the full public bidding process is preferred, the resolution would not be needed, as a notice of public hearing would be issued, and bids would be received by the council.



(4) City Tree Inventory

- a. District Forester Mark Vitosh began the city tree survey today (9/12), and expects to be completed with his data collection by the end of the day tomorrow. It will take some time to put together the full report, which he is targeting for December of this year. Mark notes he has observed some trees that he thinks should be looked at prior to that time, and anticipates sending out a letter later this month identifying these locations.

(5) MUTCD Sign Management Plan

- a. GIS data has been received from MPOJC. This data is being built into the GIS database. Drafting of the sign management plan document is underway, and a draft of this should be complete for the November council meeting.
- b. FHWA has recently issued a list of proposed changes to the sign management plan requirements, which push back the mandatory dates for preparing the management plan and completing the city-wide sign updates. These proposed changes would not be adopted until November of this year at the earliest. The current requirement is to have the sign inventory and management plan completed by January 2012.

(6) One University Place

- a. Meetings were held with Iowa City Engineering and the developer prior to the August work session to review the proposed public utility work (to be owned by City of Iowa City). City Engineer reports were updated prior to the work session reflecting the requirements and decisions reached by Iowa City staff.
- b. Brian Willham, transportation engineer with Shive-Hattery, has been working directly with John Yapp and Kent Ralston on an as-needed basis during the month. He has provided traffic model updates and evaluations based on revised site layouts, building usage and vehicle trip estimates.

Please feel free to contact me if you have any questions about these or any other items.

JDB



Date: September 8, 2011
To: Brennan McGrath
From: Kent Ralston; Assistant Transportation Planner
Re: Melrose Avenue & Sunset Avenue / Koser Avenue Signalization

Per your request, we investigated the use of 'leading pedestrian interval' signal phasing at both the Sunset / Melrose intersection as well as the Koser / Melrose intersection. The purpose of the analysis was to determine if the existing 'all-red' signal phasing at these locations could be replaced with the leading pedestrian phase to reduce overall intersection delay while maintaining pedestrian safety.

Existing Conditions

Currently, when 'called' by a pedestrian (using the existing push buttons), the traffic signals at each location provide approximately 27 seconds for pedestrians to cross the street. Motorists traveling in all directions are held with a red signal for the entire 27 second 'all-red' phase.

Leading Pedestrian Interval

With a leading pedestrian interval, motorists and pedestrians traverse the intersection at the same time. However, the 'walk' signal appears 3-5 seconds before the green traffic signal for motorists on the parallel street. This leading pedestrian interval increases the visibility of pedestrians in the crosswalk and allows them to establish priority in the crosswalk before turning vehicles can interfere. The purpose of this strategy is to reduce pedestrian conflict with right and left turning motorists as well as the incidence of pedestrians yielding the right-of-way to turning vehicles.

Analysis

Replacing the existing 'all-red' pedestrian phasing at said intersections with 'leading pedestrian interval' signal phasing would reduce overall intersection delay at either intersection by a minimum of 15 seconds per signal cycle when the pedestrian push button(s) are actuated. A peak hour analysis performed from 4:30 – 5:30 on August 31st at the Sunset/Melrose intersection revealed that 15 pedestrians actuated the push-button (which if utilizing a leading pedestrian interval would have reduced overall intersection delay by approximately 4 minutes or 7% during the peak hour). Motorists delayed by the current all-red pedestrian phase will notice a decrease in delay; other motorists will see no change to current signal operations. With regards to pedestrian safety, Iowa City has implemented leading pedestrian intervals at several locations and has not observed any significant issues.

Related improvements that could be made to the intersections include installing "Turning Traffic Must Yield to Pedestrians" signage on signal mast arms, replacing the existing pedestrian push-buttons with audible push-buttons, replacing the existing pedestrian signals with countdown timers, and installing battery back-up systems. Each of these improvements are endorsed in the Manual for Uniform Traffic Control Devices. Ballpark cost estimates for these improvements are as follows – the cost estimates are for *each* intersection.

Cost Estimates (per intersection)

- \$300 - Installation of 'Turning Traffic Must Yield to Pedestrians' signs (\$75 each - quantity 4)
- \$784 - *Sunset/Melrose* Audible pedestrian 'push-buttons' (\$98 each - quantity 8)
- \$392 - *Koser/Melrose* Audible pedestrian 'push-buttons' (\$98 each - quantity 4)
- \$2,800 - Installation of Count-down pedestrian signals (\$350 each - quantity 8)
- \$4,950 - Installation of battery back-up system (\$4,950 each - quantity 1)
- \$150 - Time to rewire for leading pedestrian interval (\$50/hr. - quantity 3)

To install leading pedestrian intervals at either intersection, the City would need to purchase the pedestrian push buttons and be responsible for the rewiring fee. Total cost for installing the leading pedestrian interval at *Sunset/Melrose* is estimated at \$934; total cost for *Koser/Melrose* is estimated at \$542.

Please contact me at kent-ralston@iowa-city.org or 356-5253 with any questions you may have.

cc: Louise From, Mayor, University Heights
John Yapp, Director, MPOJC



Date: September 9, 2011
To: University Heights Mayor & City Council
From: Kent Ralston; Assistant Transportation Planner
Re: Shive-Hattery Technical Memorandum

At your request, MPO staff has worked with Brian Willham (Shive-Hattery) to update the traffic review associated with the proposed One University Place Planned Unit Development (PUD). The attached technical memorandum provides an updated review of the traffic operations at both the Sunset Street / Melrose Avenue intersection and main entrance to the proposed PUD. The traffic review uses the most recent information available regarding the commercial and residential portions of the development, including: a reduction in the overall square footage of commercial space, a reduced number of residential units, and the inclusion of a community center. The memorandum also assumes a realignment of the north leg of Sunset Street and construction of a dedicated left-turn lane for eastbound traffic as instructed by the City Council. The model did *not* assume that the main entrance to the development (off Melrose) would be signalized immediately upon construction.

Summary of results:

- The realignment of the north leg of Sunset Street and construction of a dedicated left-turn lane for eastbound motorists at the Melrose/Sunset intersection remains beneficial for overall traffic operations adjacent to the proposed development.
- Upon build-out, traffic exiting the main entrance to the proposed PUD will experience delays in the peak periods.
- An additional 80 vehicles exiting the proposed PUD in the PM peak hour would result in a traffic signal being warranted at the main entrance. As such, it is recommended that the intersection be designed for future signalization and that the operation of the intersection be monitored for operation and safety issues that would warrant signalization.

Attachment:

TECHNICAL MEMORANDUM

TO: John Yapp, MPOJC
Kent Ralston, MPOJC

FROM: Brian Willham, PE, PTOE

DATE: September 2, 2011

RE: One University Place
University Heights, Iowa
Traffic Review

This memorandum includes an update of traffic operations at the Melrose Avenue and Sunset Street intersection and the Melrose Avenue and Main Entrance intersection in conjunction with the proposed One University Place development. The current proposed development includes an un-signalized full access entrance on Melrose and a right-out-only exit onto Sunset Street, north of Melrose Avenue. **Table 1** includes the modified land uses as currently proposed.

Table 1: Estimated Trip Generation

Land use (ITE Code)	Gross Floor or Leasable Area (1,000 SF)	Dwelling Units (EA)	Average Rate	Vehicle Trips
Residential Condominium / Townhouse (ITE Code 230)				
Average Daily Traffic (50% in / 50% out)	--	69	5.81	200 in / 200 out
AM Peak Hour (17% in / 83% out)	--	69	0.44	6 in / 25 out
PM Peak Hour (67% in / 33% out)	--	69	0.52	25 in / 11 out
Quality Restaurant (ITE Code 931)				
Average Daily Traffic (50% in / 50% out)	4.0	--	89.95	180 in / 180 out
AM Peak Hour (50% in / 50% out)	4.0	--	0.81	5 in / 5 out
PM Peak Hour (67% in / 33% out)	4.0	--	7.49	20 in / 10 out
Specialty Retail Center (ITE Code 814)				
Average Daily Traffic (50% in / 50% out)	9.1	--	44.32	205 in / 205 out
AM Peak Hour (48% in / 52% out)	9.1	--	6.84	30 in / 33 out
PM Peak Hour (44% in / 56% out)	9.1	--	2.71	11 in / 14 out
Recreational Community Center (ITE Code 495)				
Average Daily Traffic (50% in / 50% out)	2.5	--	22.88	30 in / 30 out
AM Peak Hour (61% in / 39% out)	2.5	--	1.62	5 in / 5 out
PM Peak Hour (37% in / 63% out)	2.5	--	1.45	5 in / 5 out

The estimated traffic generated by the proposed development was added to the existing peak hour traffic for the AM and PM Peak Hour traffic models. Peak hour traffic volumes for existing and proposed conditions are found in **Figure 1** and **Figure 2**. The proposed traffic distribution assumes that approximately 50% of the traffic travels from/to the east on Melrose Avenue, 10% travels to/from the south on Sunset Street, and 40% travels to/from the west on Melrose Avenue. Because of the lengthy delay that SB left turning vehicles would encounter during peak hours, it was assumed that 75% of the traffic exiting to the east of the site would use the right-out-only exit on Sunset Street and that 25% of the eastbound exiting traffic would continue to use the main entrance on Melrose Avenue, particularly those that aren't familiar with the site operations.



Figure 1: Existing Traffic

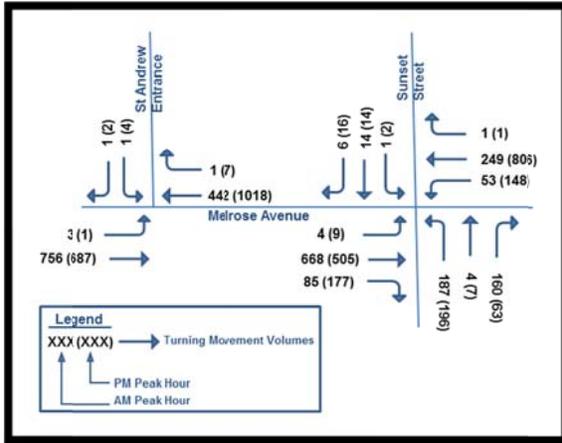
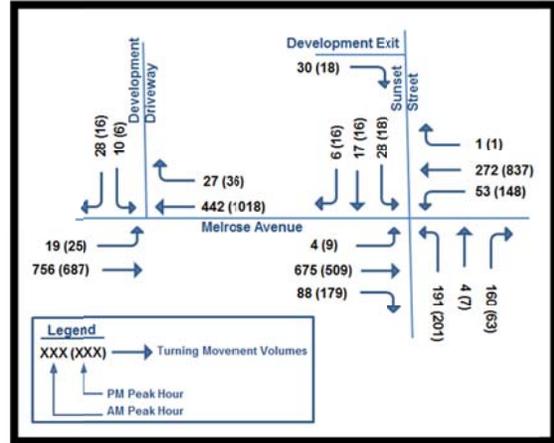


Figure 2: Proposed Traffic



The *Synchro* traffic modeling that was completed resulted in the values for delay and Level of Service that are presented in **Table 2**. Included in the analysis was the existing conditions, re-aligned Melrose/Sunset geometry with no change in land use at the St Andrew property (including the elimination of the current north/south split phasing as well as the all-way pedestrian phase), and re-aligned Sunset/Melrose geometry with the addition of the proposed development traffic.

Table 2: Intersection Delay and LOS

Scenario	Melrose Avenue / Main Entrance* (Un-signalized)				Melrose Avenue / Sunset Street (Signalized)			
	AM		PM		AM		PM	
	Delay	LOS	Delay	LOS	Delay	LOS	Delay	LOS
Existing Conditions	29	D	>120	F	23	C	79	E
Geometric Improvements Only	29	D	>120	F	19	B	20	C
Geometric Improvements w/ Development Traffic	38	E	>120	F	19	B	22	C

*The Melrose Avenue / Main Entrance intersection results are the SB left turn movement

The following summarizes the current traffic modeling results:

- Traffic exiting the proposed Main Entrance on Melrose Avenue will experience lengthy delays during the AM and PM peak hours of the day. This is true for existing conditions as well, but very few vehicles currently exit the Church site. With the additional proposed traffic turning left onto Melrose Avenue during peak hours, a potential safety issue exists due to the eastbound queues from the Sunset Street intersection.
- It is recommended to re-align the Melrose Avenue and Sunset Street intersection, including the addition of an eastbound left turn lane, in conjunction with the proposed development.
- An additional 80 vehicles per hour during the PM peak hour would result in traffic signals being warranted at the Main Entrance intersection. Although not warranted based on traffic volumes alone, it is recommended to monitor the operation of the main entrance on Melrose Avenue for operation and safety issues after the proposed development is in place. If a safety issue develops as a result of the additional development traffic, the addition of traffic signalization should be considered.

Please let me know if you have any questions on the information included in this memorandum.

MEMORANDUM

TO: University Heights City Councilors

DATE: September 6, 2011

FROM: Pat Bauer

Re: Failures to Insist on Development Agreement Provisions Essential to Adequate Protection of the Interests of the Citizens of University Heights

INTRODUCTION

No episode in the City Council's consideration of Jeff Maxwell's project perhaps has been as distressing as the August 23rd work session's marathon march through the thirty-four items Steve Ballard identified as important policy questions involved in determining the contents of a development agreement. If a number of tentative determinations are carried forward to final action, University Heights will have surrendered much of the bargaining power previously reserved to it by relevant portions of Ordinance No. 180 and the Conditional Zoning Agreement (see Attachment Pages A1-A2).

As a procedural matter, pushing through a series of tentative determinations in a three hour segment that began at 9:15 p.m. and ended at 12:15 a.m. is a striking measure of the desperate commitment the current three-person council majority seemingly has to getting something locked up before the citizens of University Heights are able to express their views about this project in the upcoming November city election. As a substantive matter, the tentative resolution of many items occurred by means of a disheartening chorus of "I'm comfortable with that" by three councilors who consistently rejected Steve Ballard's identification of matters that would protect the City of University Heights in favor of positions that would protect Jeff Maxwell.

The cumulative effect of the points at which the current three-person council majority "caved" and gave Jeff Maxwell what he was after may not come through the sanitized recounting of the official minutes, but the few residents able to endure to the end saw things that can in no way be squared with repeated claims that the process to date has involved "negotiations" with Jeff Maxwell. The balance of this memorandum describes more than a half dozen items on which Jeff Maxwell clearly prevailed at the expense of interests of the City of University Heights, but residents should view for themselves the videorecording of the work session to confirm what and how things happened.

To be sure, on a few points where the City's interests were sufficiently clear that an acceptance of Jeff Maxwell's position would have been widely recognized as utterly indefensible, "compromise" outcomes imposing some usually relaxed constraint did occur. Fully in keeping with the basic orientation demonstrated last fall in pushing Ordinance No. 180 through in advance of the January special election and again this spring by an unyielding insistence on taking action on the PUD Application, Developer's Agreement, and/or TIF Payments before the November city election, whenever a choice between the interests of the City of University Heights and Jeff Maxwell has involved anything approaching a close question, the current three-person council majority has almost always come down on Jeff Maxwell's side.

ITEMS WHERE JEFF MAXWELL IS RECEIVING MUCH MORE LENIENT TREATMENT
THAN OTHER SIMILARLY SITUATED DEVELOPERS

Item 15. Timing of Construction

In response to Steve Ballard's suggestion that "[t]he Council may wish to provide that construction of the proposed development must be commenced by a certain date and be completed by a certain date," Tom Gelman asserted that "it seems unnecessary to place a time constraint, but if the City Council feels compelled to do so, then it is suggested that perhaps ten years would be a reasonable time frame in which to require commencement of the project ... No time limit should be imposed that would result in the expiration of an approved PUD after such a project has been commenced." Because a related provision makes clear that the project is likely to be built in two separate phases (one for each building) with only a "soft" limit for the completion of each phase ("all reasonable efforts to complete construction of [each] phase as efficiently and in as timely a manner as the parameters of the project permit") and no limit whatsoever on the length of the interval between phases, the current three-person council majority's unqualified embrace of the developer's position results in no requirement other than commencement of the first phase within a decade with essentially open-ended ability to hold off on commencement of the second phase for some unlimited number of years to come.

No provision probably speaks louder about the speculative quality of both Jeff Maxwell's project and the equally speculative quality of the current three-person council majority's effort to lock in their approval of it. The City's failure to include a completion deadline allowed three buildings in the Grandview Condominiums to sit "boarded up" for a substantial length of time, and allowing something similar to occur with the Maxwell project reflects an indifference to the interest of anyone other than Jeff Maxwell. With Tom Gelman repeatedly invoking on other items the normative force of his experience elsewhere, it is notable that with both Plaza Towers and Hieronymus Square the City of Iowa City required commencement of construction within a year of the approval of a development agreement and completion of all construction within two years thereafter.

Item 32. Restrictions on Transfer to Entities Not Owned or Controlled by Jeff Maxwell

Jeff Maxwell repeatedly has invoked various personal qualities as important reasons for approval of successive requests and just as frequently the current three-person council majority has cited some of those qualities in support of their actions in approving those requests. In such circumstances, Steve Ballard understandably suggested that an appropriate transfer restriction would protect the City's interest in continuing to deal with the same person going forward, a requirement especially important where hasty "front-loading" of particular matters will necessitate further development of various details some years down the line.

Although at other points Tom Gelman expressed discomfort with absolutes, no such reservations are apparent in his unqualified response to this item: "Any restriction on the transfer of the Development Agreement is objectionable." Apart from its rather telling reflection of possible speculative purposes, Tom Gelman's blanket rejection of this requirement again is directly contrary to comparable provisions the City of Iowa City has included in the development agreements for both Plaza Towers and Hieronymus Square.

Item 7. Rental/Leasing of Residential Units

In another instance of an absolute stance inconsistent with his position on other items, Tom Gelman initially rejected any limitations on the developer's ability to lease all units for as long as it might wish to do so: "The developer does not wish to otherwise have restrictions on leasing residential units that are not applicable generally in University Heights, and believes that any such restrictions would be discriminatory." In a rather impressive example of how a little backbone could go a long ways given Jeff Maxwell's precarious need to get as much as he possibly can before the current three-person council majority potentially disappears, Tom Gelman quickly acceded to a 25% limitation on the number of residential units the developer will be allowed to use as rental properties.

Once again, treatment of other developers has been more demanding than what the current three-person council majority is inclined to require from Jeff Maxwell. With Birkdale Court, the development agreement with Jeff Hendrickson incorporated the following restriction on the rental of residential units:

No unit shall be purchased for rental purposes. No unit may be rented under any circumstances except in the sole instance when the owner's profession demands the removal of the owner from Iowa City for a period of nine consecutive months or longer. In these circumstances, only, the unit may be rented, and under said circumstances, the unit may be rented only to a responsible person or family approved by the Board of Directors. It is clearly the policy of the Association not to permit the rental of any unit except under extraordinary circumstances as set forth herein.

Despite all the rhetoric about how OUP might somehow counteract the growth of rental properties in University Heights, the current three-person council majority only partially resisted Jeff Maxwell's inclination to place his own financial interests ahead of those of the citizens of University Heights.

ITEMS WHERE NOT ADDRESSING SOMETHING HERE AND NOW INVOLVES CONSIDERABLE RISK THE MATTER WILL NOT BE ADDRESSED BEFORE THE DIFFICULTY OF DOING SO HAS INCREASED CONSIDERABLY

In other instances the current three-member council majority refused to get into the details of significant regulatory concerns with repeated statements that the matter "should be handled by ordinance." Although entirely consistent with a "kick the can down the road" mentality that in hindsight has allowed unsound elements to surface at later points where various difficulties could have been avoided if something had been more timely addressed at an earlier phase of the proceedings, this stance involves three substantial difficulties.

First, in the absence of a professional staff, University Heights rather notoriously has often gotten around to things only after problems have materialized. Although some belated relief may remain possible, "closing the barn door after the horse has left" is not a regulatory strategy reasonably embraced by councilors inclined towards placing protection of the public interests of city residents ahead of Jeff Maxwell's private interest in getting things locked up before the November election.

Second, the challenge of crafting appropriate regulations in the context of a single specific situation that in significant ways may be unlike any other circumstances in our community may be considerably greater than coming up with regulations that may operate much differently in those other circumstances. Treating things like liquor licenses, excessive noise, or signage as “something to be handled by ordinance” flagrantly ignores the fact that such things either are unlikely to present much of a problem anywhere else in University Heights (in which case the appropriateness of regulating them now seems rather compelling) or will present problems of a decidedly different nature in other settings (e.g., ability of city police to monitor and enforce loud parties in the backyard of residence v. the effects of a loud party on the proposed rear building’s sixth floor rooftop reception area, permanent flashing signage for retail businesses at OUP v. real estate agents temporarily placing signs in parking areas between sidewalk and street).

Third and most seriously, although the “out” of handling significant concerns through ordinances may now be convenient to the current three-member council majority’s apparent purpose of getting something through in advance of the November election, that short term political advantage will have been secured at the expense of the abdication of a presently available power considerably greater than that excisable at a later point in time through the enactment of an ordinance. Relevant portions of Ordinance No. 180 and the Conditional Zoning Agreement (see Attachment Pages A1-A2) provide a fully defensible basis for addressing various things at this time (e.g., restrictions on leasing) that in all likelihood could never subsequently be secured through the enactment of an ordinance. It approaches a dereliction of duty for the current three-person council majority to forgo the opportunity to address such things now in the absence of some formal assurance by Steve Ballard that things can be accomplished as readily and as fully by the enactment of an ordinance as some later point in time.

Item 13. Restrictions on Commercial Uses/Hours of Operation

Although both Ordinance No. 180 and the Conditional Zoning Agreement clearly authorize the imposition of further restrictions on permissible commercial uses, the current-three person council majority saw no need to add anything to what the zoning ordinance presently specifies as permissible outer limits. This failure to impose any additional limitations is especially egregious because the uses presently permitted by the zoning ordinance were specified at a point in time when the project included 107 spaces of surface parking and such uses have never been reviewed and revisited in light of a subsequent halving of allowed surface parking spaces to 53.

The idea that there presently is no need to adjust the sorts of commercial uses that previously may have been sensible in a context involving twice as many parking spaces is hardly out of character with the shortsighted nature of other determinations by the current three-person council majority, but the developer’s position clearly is that once “the horse is out the barn” in terms of uses outstripping the reduced amount of available surface parking, the City will be unable to rectify the spill-over of vehicles onto the streets of adjacent neighborhoods: “In the event [permitted commercial] uses are modified by zoning amendment, previously existing uses will be grandfathered until such time as such use ceases to be operated by one year.”

Item 9. Law Enforcement on Property

Item 14. Outdoor Game Day Sales

Item 18. Limit Liquor Licenses

Item 29. Restrictions on Signs

Although they may involve effects of varying severity, each of these items stands as a lost opportunity to address things now that could easily prove troublesome down the line. The smaller amount of effort and greater effectiveness of resolving these issues now, however, seemingly is overcome by the developer's need to get things done before the November election. Once again, the current three-person council majority is advancing Jeff Maxwell's private interests at the expense of the interests of the residents of our community.

To provide but one example, in Item 9 Steve Ballard suggested that "the Council ... consider requesting that the developer and those coming after the developer (owners of condominium units) agree that the University Heights Police Department may come upon the property in perpetuity to enforce all ... regulations upon the property." It takes little thought to realize that enforcement of excessive noise emanating from a fourth-floor balcony or a sixth-floor rooftop reception area presents a very different circumstance from that presented by an overly-loud backyard barbecue, but once again Tom Gelman obstinately insists that the developer cannot be subjected to any requirement that does not extend to all other parts of University Heights: "The property should be subject to the same rules, regulations, and laws as other properties in University Heights with regard to any official acts, whether of the police department or any other division of the City."

The character of this recurring stance also speaks volumes about the likelihood that any semblance of reasonableness Jeff Maxwell may adopt while pursuing a requested approval will outlast his receipt of such approval. Consider the consistency of this "don't tread on me" position with the terms of the Conditional Zoning Agreement Jeff Maxwell signed in order to secure approval of Ordinance No. 180:

... Developer shall not challenge the authority of the City Council to further regulate the development of the subject property under a Multiple-Family Commercial Planned Unit Development (PUD) Agreement, ... including but not limited to regulation regarding ... restrictions on types of commercial uses and hours of operation for such uses [and] restrictions on leasing of residential dwellings Developer ... acknowledge[s] that the conditions contained herein are reasonable conditions to impose on the land under Iowa Code §414.5, and that said conditions satisfy public needs that are caused by the requested zoning change.

CONCLUSION

In both form and substance, the August 23 work session seems hard to square with Mike Haverkamp's previous assertion that "I'm deliberate. I will take as much time as we need. The [election] in November means nothing to me." Instead, it seems that the November election means everything to the current three-person council majority and that their haste to get something locked in by then outweighs the need for careful action to protect the interests of University Heights and its citizens.

Residents attending the August 23 work session saw (and those able to view a videorecording of it will see) the way in which an unyielding commitment to moving forward prevailed over the need for thoughtful consideration of significant difficulties. Bad results more commonly are caused by bad process than bad persons, and the need to fully evaluate each and every thoughtful concern raised by both city staff and interested citizens must not be subordinated to a perceived imperative to act in advance of citizens weighing in at the ballot box. Going forward, the current three-person council majority must demonstrate much greater commitment to “taking as much time as we need” to get things right.

ORDINANCE NO. 180

AN ORDINANCE AMENDING ORDINANCE NO. 79 (ZONING) TO REQUIRE
THAT A DEVELOPER OWN THE REAL PROPERTY IDENTIFIED IN A
MULTIPLE-FAMILY COMMERCIAL PUD APPLICATION

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF UNIVERSITY HEIGHTS,
JOHNSON COUNTY, IOWA:

* * *

- F. Property in a Multiple-Family Commercial zone shall be used for the following purposes only:
1. All uses which are allowed in an R-1 Single-Family Residential Zone, subject to the height restrictions, yard regulations, lot regulations, and off-street parking regulations specified for the R-1 Single-Family Residential Zone in Sections 7, 8, 9, and 10 of this Ordinance.
 2. **As provided in or limited by the Development Agreement** between the City of University Heights and the Developer **pursuant to the Multiple-Family Commercial Planned Unit Development (PUD) regulations and requirements set forth in Section 13 of this Ordinance.**

* * *

Section 13. Multiple-Family Commercial PUD.

- B. Development Regulations and Restrictions. Property may be developed as a Multiple-Family Commercial PUD Zone pursuant to the following regulations and restrictions:

* * *

8. **The University Heights City Council may impose additional reasonable conditions as it deems necessary** to ensure that the development is compatible with adjacent land uses, will not overburden public services and facilities, and will not be detrimental to public health, safety, and welfare.
- C. Procedure.
3. **The University Heights City Council in its sole discretion may approve, deny, or approve on condition any such Plan Application or any part thereof.**

CONDITIONAL ZONING AGREEMENT

This agreement is made between the City of University Heights, Iowa, a municipal corporation (hereinafter referred to as "City"), St. Andrew Presbyterian Church and MidWestOne Bank (hereinafter together referred to as "Owners"), and Jeffrey L. Maxwell (hereinafter referred to as "Developer").

* * *

6. In consideration of the City's rezoning Owners' property, Developer agrees to, and Owners accept, the following conditions:

* * *

- b. that **Owners and Developer shall not challenge the authority of the City Council to further regulate the development of the subject property under a Multiple-Family Commercial Planned Unit Development (PUD) Agreement, as provided in the City's Zoning Ordinance, as amended, including but not limited to regulation regarding site design and building elevations, vehicular access, landscaping and common open space, restrictions on types of commercial uses and hours of operation for such uses, restrictions on leasing of residential dwellings, and amenities to serve the residents and businesses of the development,** provided the City Council's exercise of such regulatory authority is in accordance with the City Council's zoning authority under such Zoning Ordinance, as amended, and is not arbitrary, capricious, discriminatory or otherwise an abuse of its discretionary zoning authority relative to Planned Unit Developments or otherwise a violation of applicable laws.

* * *

7. Owners, Developer, and the City acknowledge that the conditions contained herein are reasonable conditions to impose on the land under Iowa Code §414.5, and that said conditions satisfy public needs that are caused by the requested zoning change.

MEMORANDUM

TO: University Heights City Councilors

DATE: August 26, 2011

FROM: Pat Bauer

RE: Discrepancies in Financial Information Provided to Councilors at Tuesday's Work Session

Introduction

The financial information provided to councilors at Tuesday's work session contained almost a half dozen material discrepancies. This circumstance is especially distressing because it occurs in the face of concerns about similar inadequacies previously raised in a number of earlier submissions. While it is troubling enough that Jeff Maxwell feels free to continue to submit incomplete or misleading financial information in an untimely manner, with first impressions potentially becoming lasting impressions it is even more disturbing that three councilors have now twice expressed support "at this point in time" on the basis of such deficient submissions.

1. "Discounting" of Amount of Annualized Rate of Return Attributable to TIF Payments

The "private profit" of \$2,500,000 resulting from total projected non-TIF revenue of \$47,400,000 and total projected costs of \$44,900,000 produces a projected developer annualized rate of return of 5.01%. The addition of net projected economic value of TIF payments to the developer in the amount of \$3,625,000 (a figure that is 145% of the developer's \$2.5M private profit), however, only produces a 5.43% increase in the developer's annualized rate of return (a figure that is only 108% of the annualized rate of return produced by the developer's private profit).

Mr. Craven's undisclosed financial model seemingly discounts taxpayer money paid to the developer so that it produces a smaller proportionate annualized rate of return than the money Jeff Maxwell earns from marketing his units to private buyers. If they are treated equally, however, the proposed TIF payments to the developer would raise his annualized rate of return to 12.27%. Conversely, if the developer's annualized rate of return is kept at 10.44%, such equal treatment would allow the necessary net projected economic value to the developer to be reduced to \$2,709,581, an amount that would allow (i) a 75/25 split of incremental tax revenues (i.e., ten annual developer payments of \$520,000, ten annual LMI payments of \$80,000, and ten annual payments of \$200,000 to local governments) with a resulting "break-even" point of eighteen years (see attached Scenario 4).

2. "Double-Billing" for Value of City Space

Attributing \$65,000 to the "projected annual value of City space" seems indefensible because local governments have in effect already bought and paid for that same space through the deduction of \$675,000 factored into the calculation of the net projected value of TIF payments to the developer. A possible explanation that a benefit specific to the City is being realized at an offsetting expense to other local governments is rather troubling, but such explanation might point towards the appropriateness of a complete elimination of the City space.

Under the approach used in the prior segment, elimination of the City space would further decrease the necessary net projected economic value to the developer to \$2,034,581, an amount that would allow a 65/35 split of incremental tax revenues (i.e., ten annual developer payments of \$440,000, ten annual LMI payments of \$80,000, and ten annual payments of \$280,000 to local governments) with a resulting “break-even” point of fifteen years (see attached Scenario 5)..

3. No Mention of Required LMI Housing Assistance

While the required amount of low and moderate income housing assistance is not paid to the developer, it obviously involves an additional diversion of incremental tax revenues away from those public purposes towards which such revenues might otherwise be put. Failing to mention that figure results in a significant understatement of the total overall public cost of giving Jeff Maxwell the TIF assistance he is requesting. With the reinstatement of Sunset intersection, however, the required amount presumably may be the total amount of \$800,000 specified in the original request and assumed for purposes of calculations stated in the prior segment and presented in attached Scenarios 4 & 5.

4. Difference in Valuations of City Space

Separate and apart from the “double-billing” for the value of city space noted above, statements of both cost and value use amounts that are higher than those produced by the proportionate reduction in size (i.e., 2,500 sf / 4,000 sf = .625) between the original and revised TIF requests. The drop in “purchase price” from \$920,000 in the original request to \$675,000 in the revised request is \$100,000 greater than the \$575,000 figure that would be proportionate to the reduction in size. Similarly, the drop in “annual value” from \$65,000 in the original request to \$48,000 in the revised request is \$7,375 greater than the proportionate-to-reduction-in-size figure of \$40,625 figure. These differences conceivably reflect the cost or value of space “buil[t] out [to] a commercially acceptable level of finish” over the cost or value of “white envelope” space, but if so such increased cost or value should be explained and substantiated rather than simply being asserted.

5. Questionable Selection of Values Used in Calculations of TIF Ratios

The revised request avoids a previously noted “apples/oranges” confusion of assessed and taxable value that distorted the original request’s comparison of TIF ratios with Plaza Towers. In view of the possibility of lingering misperceptions caused by that earlier confusion, a more forthright presentation usefully could have noted that continuing forward the prior use of taxable values in the comparison made with Plaza Towers would essentially double the ratio figures for OUP to something in the vicinity of 15% for the original request and something in the vicinity of 17% for the revised request.

Conclusion

As initially noted, the foregoing discrepancies are entirely in keeping with a persistent pattern of misstatements and omissions that have occurred previously and presumably will continue going forward unless and until councilors insist that considerably more accurate and complete

information must be provided on a more timely basis by someone who is seeking to obtain a very substantial sum of incremental tax revenues. A continuing failure to first secure and then rigorously assess such information falls far short of the demanding standards of financial stewardship elected officials must adhere to considering a very large and longstanding commitment of public funds to a still-to-be-determined group of private investors.

Kent Ralston

From: City Clerk <uhclerk@yahoo.com>
Sent: Thursday, August 25, 2011 8:33 PM
To: John Yapp; Kent Ralston
Subject: Fw: Financial Information Distributed to Councilors at Tuesday's Work Session

----- Forwarded Message -----

From: "pbb338koser@aol.com" <pbb338koser@aol.com>
To: mike-haverkamp@university-heights.org; rosanne-hopson@university-heights.org; stan-laverman@university-heights.org; brennan-mcgrath@university-heights.org; pat-yeggy@university-heights.org
Cc: louise-from@university-heights.org; ballard@lefflaw.com; uhclerk@yahoo.com
Sent: Thursday, August 25, 2011 9:35 AM
Subject: Financial Information Distributed to Councilors at Tuesday's Work Session

Dear Councilors,

It was most disappointing that the two-page financial information sheet distributed to councilors at Tuesday's work session hadn't previously been made to councilors, wasn't shared that evening with members of the public in attendance, and as of this morning apparently still hasn't been made available to citizens in a posting to the OUP page on the city's web site.

In earlier submission I identified various discrepancies in financial information previously provided by Jeff Maxwell, and as indicated in the memo I submitted on Monday, Mr. Craven never has responded to a rather critical concern raised two weeks ago in the last segment of an e-mail thread attached to my memo.

Councilors formulating tentative positions on the OUP TIF request based on cursory information being presented "on the fly" without any prior opportunity for considered reflection by councilors or any prior or contemporaneous opportunity for review and comment by citizens is an extremely poor way of proceeding forward on a complicated financial matter of this magnitude.

Pat Bauer
338 Koser Avenue

Kent Ralston

From: Alice Haugen <alice.haugen@gmail.com>
Sent: Wednesday, August 24, 2011 12:31 PM
To: Louise From; louise-from@university-heights.org; Rosanne Hopson; Rosanne Hopson; Brennan McGrath; Brennan McGrath - Council; Mike Haverkamp - Council; mike-haverkamp@university-heights.org; Stan Laverman - Council & Mayor Pro Tem; Stan Laverman; Patricia Yeggy - Council; pat-yeggy@university-heights.org
Cc: Chrs Anderson - City Clerk; Steven E. Ballard; Jeff Maxwell; jbilskemper@shive-hattery.com; John Yapp; Kent Ralston; Kevin Monson
Subject: Including the limited five-way intersection in projections
Attachments: ProposalforaFive-WayIntersectionwithLimitedAccessontheFifthLeg.pdf

Dear mayor and city council,

It appears from the work session last night that Mr. Maxwell and Mr. Monson will be presenting some details on the revised PUD at the September city council meeting. I am writing to urge you to request them to include in their projections as an alternative the limited five way intersection that I was going to present in August.

This proposal (keep the existing northern leg of Sunset for bus and emergency access, extend Sunset onto the development site to provide the main access to the project) has many benefits: it corrects the intersection of Sunset and Melrose, it only needs one stop light, and it preserves the east ravine. As the buildings are going to be narrower than before this proposal should be straightforward to implement.

I am attaching the proposal that was presented in August. I am asking you to request its inclusion in projections because otherwise it may be left out of discussions as too late to the table, and I believe it has considerable value. Please let me know if you have any other questions.

--

Warm regards,

Alice Haugen

Ring the bells that still can ring
Forget your perfect offering
There is a crack in everything
That's how the light gets in.

MEMORANDUM

TO: University Heights City Councilors

DATE: August 22, 2011

FROM: Pat Bauer

RE: Questions and Comments About Revised OUP TIF Request

Introductory Observations

The revised TIF request that Jeff Maxwell submitted to the University Heights City Council on Friday, August 19 lacks the sort of financial detail appropriate to a matter of this magnitude at this point in the proceedings. Although the unlikelihood that Johnson County would be receptive to a joint TIF agreement was explicitly raised more than two months ago,¹ at the regular August 9 council meeting Jeff Maxwell was unprepared to do anything more than (i) characterize the original TIF request as “null and void” and (ii) request special scheduling of a work session to consider a revised TIF request. In the context of a course of conduct in which complex financial issues have been presented “on the fly” and in ways that have significantly misstated critical factual matters, Jeff Maxwell expressly affirmed that he would have his revised TIF request fully completed the Friday before this Tuesday’s work session.

Unless its numbers have been totally concocted, the revised TIF request is based on financial calculations that Jeff Maxwell deliberately withheld from last Friday’s submission. If Tuesday’s work session is to be confined to the contents of Jeff Maxwell’s abbreviated letter, the effort involved in having this meeting would seem rather wasteful. If the meeting instead is going to extend to additional details not presented until then, Jeff Maxwell will have flouted the council’s direction for advanced submission of his revised proposal to permit deliberate review by both councilors and citizens.

As the balance of this memorandum details, the revised OUP TIF request fails to address a number of important financial questions and continues to be fiscally unsound. In detailing these concerns, however, various assumptions have to be made to compensate for the absence of the sorts of details that properly should have been included in last Friday’s submission.

It is distressing enough to think that Jeff Maxwell may in fact be as woefully under-prepared as his TIF submissions to date have suggested he is, or alternatively to think that it may only be an appearance of under-preparedness cynically adopted in an effort to obtain some sort of tactical upper hand by depriving both councilors and citizens of financial information needed to permit effective “double-checking” of his very sketchy math. In either event, however, it is even more distressing to realize that such conduct has occurred and may continue because three councilors seem unwilling to raise any objection to it. That pattern of acquiescence may indicate that those same councilors lack the inclination and capacity to “negotiate” with Jeff Maxwell about much of any consequence,

1. Bauer, “Questions & Concerns About Maxwell TIF Proposal” (June 15, 2011) at p. 6.

and one apt way of countering that unsettling possibility would be for Mr. Maxwell to be told on Tuesday evening in no uncertain terms that future financial submissions must be more fully detailed and more accurate than has been the case to date.

The Revised OUP TIF Request Fails to Address A Number of Important Financial Questions

Because they have been set forth in greater detail in a number of earlier submissions and do not seem to be materially altered by the cursory terms of Jeff Maxwell's revised TIF request, an initial set of financial questions can be presented in essentially "punch list" form:

1. Although it is a circumstance which follows from the range of speculative effects attributable to the perverse sequencing of the present proceedings in advance of any decision by Saint Andrew Church to sell, at the point of a potentially enforceable commitment of \$6,500,000 of incremental tax revenues there certainly would seem to be a need for some more significant specification of when both buildings will be completed (versus nothing more than an undertaking to commence construction of the first building within ten years and to complete it within another two years and no commitment about the second building other than its completion within two years of whenever construction of it might begin.²)
2. If an "initial commitment by the City of an amount equal to 80% of its allowable debt ceiling"³ is made at the present time, will this limitation of the city's borrowing authority take effect right now⁴ even though the project may not be completed for as long as a dozen years?⁵
3. What effect will "initial commitment by the City of an amount equal to 80% of its allowable debt ceiling" have upon the availability and/or cost of any other borrowing the City may need to incur?

2. Draft PUD Development Agreement (August 1, 2011) at para. 7 ("The Project is likely to be built in phases: Phase One being the south commercial /residential building, and Phase Two being the north residential building. Once construction commences on each Phase, Developer shall use all reasonable efforts to complete construction of such phase as efficiently and in as timely a manner as the parameters of the project permit and to be substantially completed within two years after the commencement date for such phase."); Maxwell, Response to Memorandum (August 1, 2011) at p. 7("In reference to time frame, it seems unnecessary to place a time constraint, but if the City Council feels compelled to do so, then it is suggested that perhaps ten years would be a reasonable time frame in which to require commencement of the project or expiration of the PUD Plan approval. No time limit should be imposed that would result in the expiration of an approved PUD after such a project has been commenced.").

3. Maxwell, City of University Heights-One University Place Project (August 19, 2011) at p. 2.

4. Bauer, "Questions & Concerns About Maxwell TIF Proposal" (June 15, 2011) at pp. 4 & 7.

5. Upon completion of each building, it appears that the City's allowable debt ceiling may be increased in an amount equal to five percent of the completed building's assessed value. Bauer, "Questions & Concerns About Maxwell TIF Proposal" (June 15, 2011) at p. 6.

In contrast, some new financial question are framed by seriously underdeveloped indications of material alterations in the dimensions of the underlying project or the composition or overall level of TIF support sought to be provided to it:

4. What is the reduction in (a) overall size and (b) projected assessed valuation resulting from the changes in the two buildings the revised TIF request is suggesting?⁶
5. What is the projected cost of “build[ing] out the community center to a commercial acceptable level of finish”?⁷
6. What amount of low and moderate income housing assistance will the revised TIF request require?

One core set of questions common to both the initial and revised TIF requests involves the critical elements of projected costs and revenues. Perhaps in response to others having identified various difficulties with the skimpy numbers contained in his initial request, Jeff Maxwell’s revised request seems to have eliminated such numbers altogether. Given the frequency with which “trust me” has been proven to be an inappropriate stance towards various aspects of the original submission, additional financial details must be required to see whether Mr. Maxwell is pursuing what he really needs or just what he thinks he can get University Heights to give him.

A striking example of calculated evasion in the process to date is provided by an extended e-mail thread in which Dennis Craven repeatedly avoided an identified circumstance where money provided by University Heights appeared somehow to be only half as valuable as money Jeff Maxwell might earn through private means. See Attachment Pages A6-A12. Since the same issue presumably may infect his revised TIF request, a response to the prior request should be required and additional information obtained to assure that this disturbing circumstance has been adequately corrected.

The Revised OUP TIF Request Remains Fiscally Unsound

The terms of Jeff Maxwell’s original TIF request previously were analyzed in various ways that never were the subject of any response. The financial coyness of the revised TIF request unfortunately requires various assumptions, but quibbles about the exact accuracy of those assumptions hardly will effect the essential thrust of analyses that have been altered to reflect what seem to be the likely circumstances of such request.

6. Maxwell, City of University Heights-One University Place Project (August 19, 2011) at p. 1 (“... I am willing to reduce the scale of the project by reducing the footprint of each of the two buildings. This will result in a reduction in the maximum number of residential units from 79 to 69, and reduce the amount of commercial space on the first floor of the mixed use building by approximately 1470 square feet.”)

7. Maxwell, City of University Heights-One University Place Project (August 19, 2011) at p. 2.

Scenario 3 (Attachment Page A1) is a table detailing the allocation of incremental taxes on a “flat” basis (i.e., unadjusted for any effects of increased taxable values or reduced rates of taxation) at the proposed 90/10 division with both revenue and present value effects based on the supposed completion of construction of both buildings four years from now.⁸ The table underscores the questionably logic of repeated assertions of “win-win” effects by demonstrating that it will take an additional fifteen years for local governments to recover property tax revenues having a present value equal to that of the tax revenues that will be diverted from them in the ten years it will take to pay Mr. Maxwell the TIF support of \$6,500,000 he claims is needed for his OUP project to proceed. In deciding to allocate resources towards a particular purpose, few private citizens or business enterprises would pursue “investments” with a “break-even” point of twenty-five years.

Indeed, Scenario 3 indicates the revised TIF request actually may provide Jeff Maxwell with a present value that may be up to \$225,000 greater than what his original TIF request was projected to produce. Under the original request, a total proposed TIF payment of \$8,000,000 was reduced to a present value of \$5,500,00 followed by offsets of \$920,000 and \$850,00 (for the value of the community center and public improvements respectively) to produce a “net projected economic value to developer” of \$3,730,000.⁹ Under the revised request, a total proposed TIF payment of \$6,500,000 with a net present value of a little over \$4,780,000 would be followed by offsets of only \$825,000 (reflecting the reduced value of the community center ($\$920,000 \times (2500\text{sf} / 4000\text{sf} = .625) = \$575,000$) and original offsite costs of \$850,000 minus \$600,000 assigned to Sunset intersection) leaving a “net projected economic value to developer” of \$3,955,000. Unless the added cost of “build[ing] out the community center to a commercial acceptable level of finish” is equal to or greater than \$225,000, Jeff Maxwell will accordingly receive more TIF support under his revised request than he would have received under his original request.

Illustrations 13, 14, 15, and 16 (Appendix Pages A2-A5) are four charts reflecting some of the same assumptions previously explained in connection with Scenario 3. Constraints of sheet size, however, resulted in limiting the demonstrated effects to a period of twenty years, and the combination of using current taxable values as a defensible point of departure and the convenience of laying out calendar years in parallel to annual periods prompted a simplifying assumption that both buildings presently are completely constructed and fully taxable. In an effort to illustrate the cumulative effects of relaxing different assumptions, the charts proceed from one where taxable values and property tax rates are entirely fixed (Illustration 13) to one where taxable values increase at assumed amount equal to five percent of initial values and property tax rates are reduced to reflect the increased revenues attributable to OUP’s assumed expansion of taxable values (Illustration 16).

8. Because the revised TIF request provides no such figures, Scenario 3 assumes that the suggested changes in the buildings will reduce their assessed value in an amount causing the previously estimated annual incremental tax revenues of \$900,000 to decrease by 11% to \$800,000. This decrease is somewhat greater than the factor suggested by the stated reduction in the size of the commercial space on the first floor of the front building ($1,470\text{sf} / 18,637\text{sf} = 7.9\%$) but less than that suggested by the stated reduction in the number of residential units ($10/69 = 12.7\%$).

A somewhat similar approach underlies Scenario 3’s assumption that the required total amount of low and moderate income housing assistance will be reduced by 12.5% from \$800,000 to \$700,00.

9. Summary of OUP TIF Request (June 28, 2011) at p. 1.

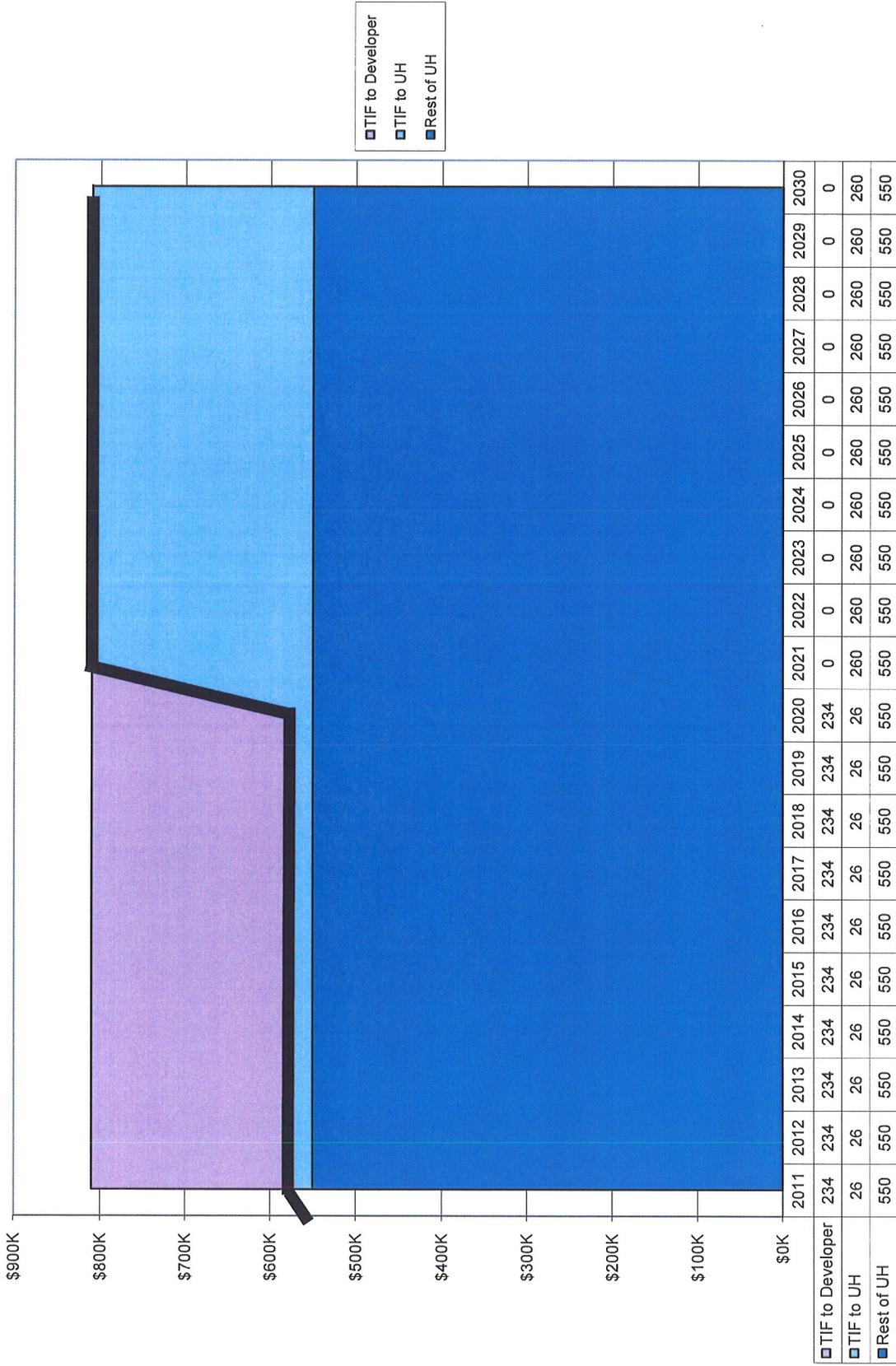
Although it involves the necessary limitations of the assumptions it carries forward, Illustration 16 (Appendix Page A5) seems the most realistic (or probably more accurately, the least unrealistic) and accordingly may be the best vehicle for graphically viewing the fiscal effects of Jeff Maxwell's revised OUP TIF request. For the first ten years, the modest amount of the portion of additional tax revenues University Heights would receive from the ten percent of incremental taxes allocated to all local governments probably wouldn't be enough to cover the cost of a half-time police officer and would only reduce the amount of property taxes that otherwise would have to be paid by the rest of University Heights by about five percent.

When TIF payments end after ten years, the amount of incremental taxes potentially available to University Heights will increase tenfold, but absent a corresponding increase in municipal expenditures based on nothing more than this sudden increase in potentially available additional tax revenues, the resulting proportionate decrease in tax rates ultimately reduces the effect of a fifty percent increase in taxable values to a reduction of less than a third in the property taxes otherwise payable by both the residents of OUP and the rest of University Heights. Once again, the misleading elements of asserted "win-win" effects are demonstrated by an illustration in which the shift in taxes payable by all residents upon the conclusion of the TIF period clearly demonstrates that during the TIF period almost a third of municipal expenses that would otherwise be paid by the residents of OUP will instead be paid by other residents in the rest of University Heights.

Conclusion

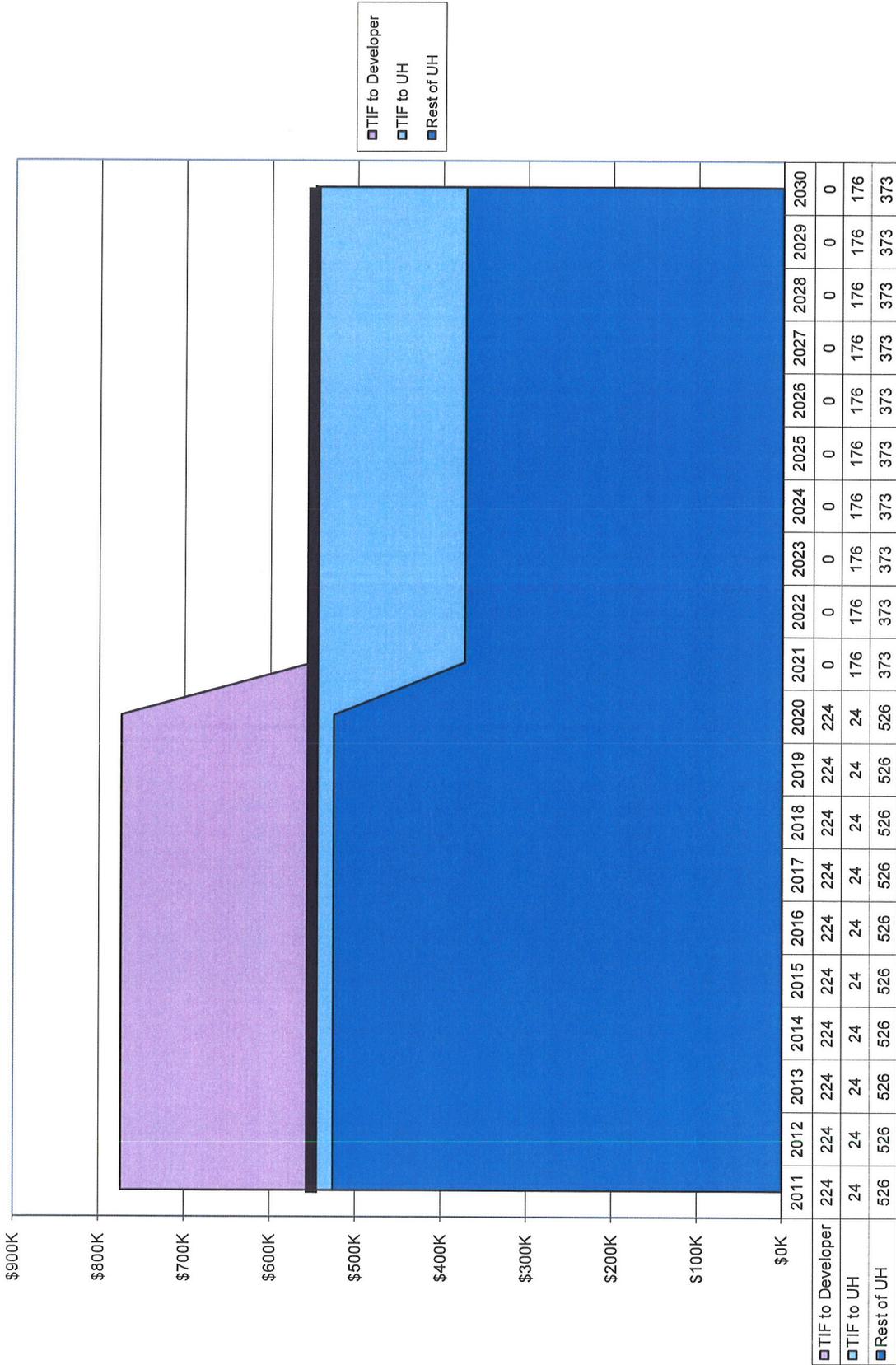
Both procedurally and on the merits, Jeff Maxwell's revised TIF request is no better (and in some instances is worse) than his original TIF request. If Jeff Maxwell can in fact get whatever he wants from three councilors, the substantial shortcomings detailed above will be swept aside in the same manner as other shortcomings that have been fully demonstrated in a series of prior submissions. If at long last, however, at least one of those three councilors is willing to stand up for University Heights instead of rolling over for Jeff Maxwell, vigorous pursuit of some of the points set forth in this memorandum could be an appropriate place to begin.

ILLUSTRATION 13
90/10 - Flat



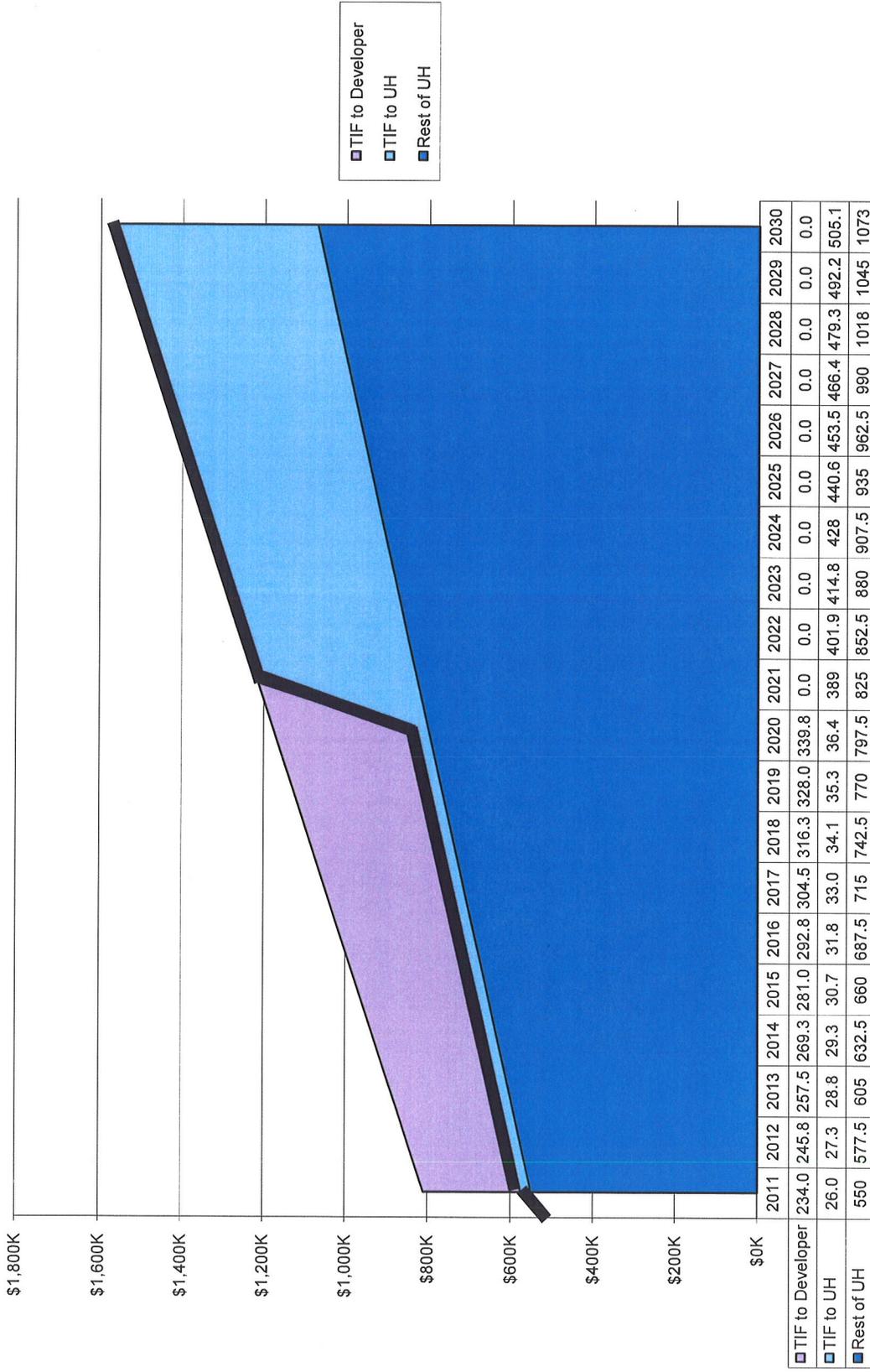
BOLD LINE = City Expenses Covered by Property Taxes

ILLUSTRATION 14
90/10 - Flat - Incorporated



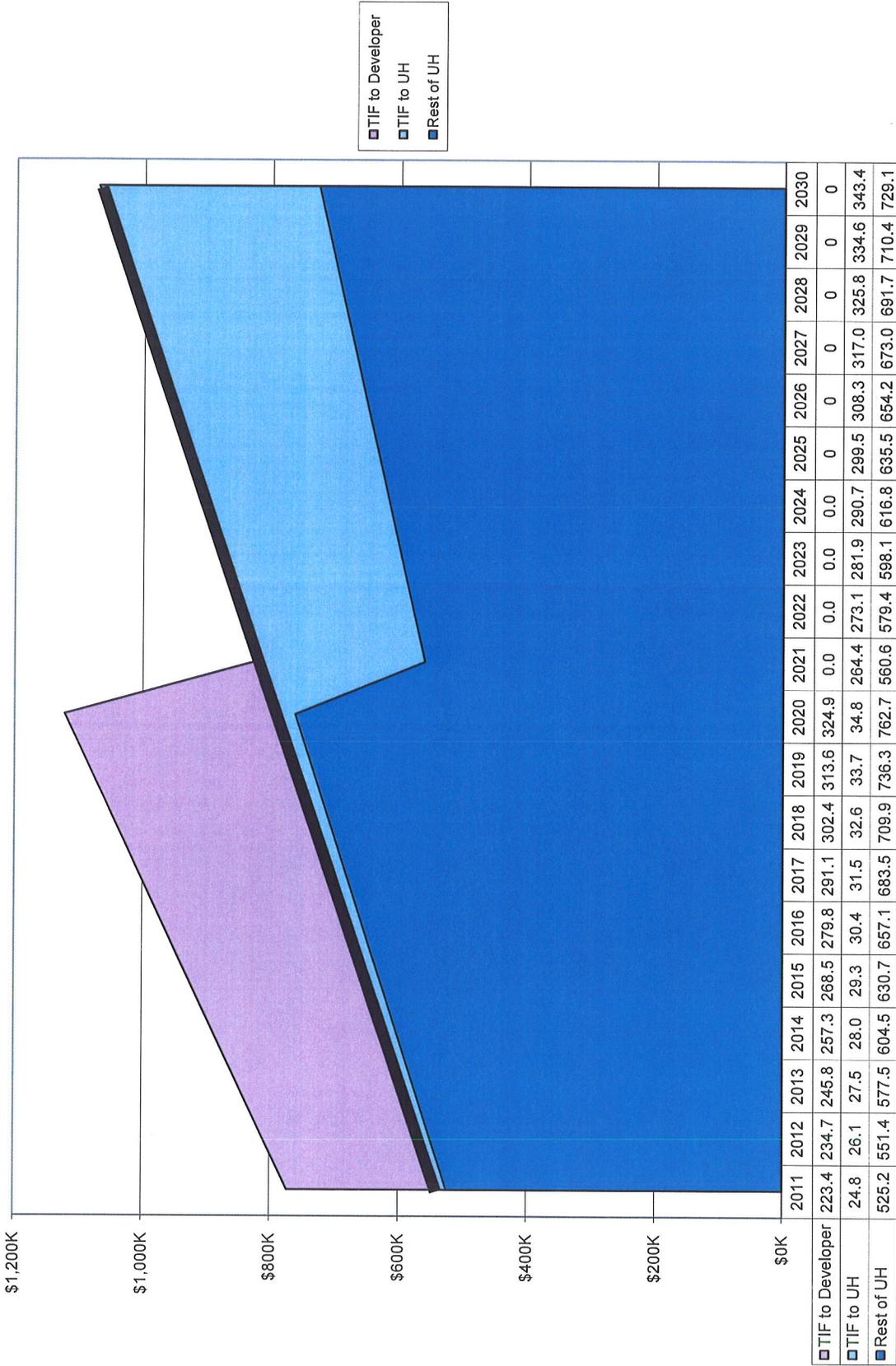
BOLD LINE = City Expenses Covered by Property Taxes

ILLUSTRATION 15
90/10 - Dynamic



BOLD LINE = City Expenses Covered by Property Taxes

ILLUSTRATION 16
90/10 - Dynamic - Incorporated



BOLD LINE = City Expenses Covered by Property Taxes

From: pbb338koser <pbb338koser@aol.com>

To: dcraven <dcraven@berganpaulsen.com>; mike-haverkamp <mike-haverkamp@university-heights.org>

Subject: Re: Request for Additional Explanations (Financial Information Provided at June 28 Work Session)

Date: Thu, Aug 4, 2011 1:41 pm

Dear Mr. Craven,

Thank you for confirming my intuition that "Total project cost" overstates the amount of the developer's investment. I know that debt financing is commonly used in real estate development, but would note that it was an identified element of the financial figures that have been provided to the City Council.

I'm left with the question posed in my third paragraph: If debt financing transforms "Total projected profit" of \$1,750,000 into a "Projected annualized rate of return (w/o TIF)" of 5.12%, how is it that net present value assistance of \$2.73M circa 2014 only raises such rate to 10.16%?

That specific anomaly was at the heart of both my originally asked and restated questions, and I'd respectfully suggest that my pursuit of a response that addresses it is hardly inappropriate.

Best regards,

Pat Bauer

-----Original Message-----

From: Dennis Craven <dcraven@berganpaulsen.com>

To: pbb338koser <pbb338koser@aol.com>; mike-haverkamp <mike-haverkamp@university-heights.org>

Sent: Thu, Aug 4, 2011 8:25 am

Subject: RE: Request for Additional Explanations (Financial Information Provided at June 28 Work Session)

Mike:

The statement "it would seem that the amount of the investment used to calculate the annualized rate of return must be (notwithstanding Explanation 2) some number that is smaller than Total projected costs" is correct. It would be very rare for any real estate project to be capitalized with 100% equity and One University Place is no different. Debt financing will be used to reduce the investment required for this project.

The amount and cost of debt financing is a very material component of the annualized return calculation.

Dennis

From: pbb338koser@aol.com [mailto:pbb338koser@aol.com]

Sent: Wednesday, August 03, 2011 5:39 PM

To: mike-haverkamp@university-heights.org

Cc: Dennis Craven

Subject: Re: Request for Additional Explanations (Financial Information Provided at June 28 Work Session)

Dear Mike,

Thank you very much for following up on this with Mr. Craven.

The additional explanations were very helpful, but there's still some things in explanations 2 and 6 that may be the source of my difficulty.

Explanation 2 states that "projected revenues and costs ... are the amounts used in the annualized rate of return" and Explanation 6 states that the "[a]nnualized rate of return ... is a calculation of the return to an investor based on the amount of the investment and the period of time it is invested ." Since Total projected profit (w/o TIF) of \$1,750,000 (Explanation 5) is only 3.4% of Total projected costs of \$51,450,000, it would seem that the "amount of the investment" used to calculate the annualized rate of return must be (notwithstanding Explanation 2) some number that is smaller than Total projected costs.

ATTACHMENT PAGE A6

I'll attach a spreadsheet that's a variation of one previously provided to Councilors illustrating the "break-even" points on a net present value basis of the two proposed TIF scenarios. Even after the offsets for the community center, public improvements, and LMI and an additional \$1M present value reduction from taking things back to 2014 (Explanation 1), I'm unable to see how \$2.73M of NPV TIF assistance circa 2014 can have an impact on annualized rate of return (whatever the "amount of investment" might be) that's only slightly less than that produced by Total projected profit of \$1,750,000 (which Explanation 2 states has no net present value dimension).

My apologies in advance if the foregoing gets into the details of the financial model that contractually non-disclosable, but I'd very much appreciate any further explanation that Mr. Craven may be able to provide consistent with those constraints.

Best regards,

Pat Bauer

-----Original Message-----

From: mike-haverkamp <mike-haverkamp@university-heights.org>
To: pbb338koser <pbb338koser@aol.com>
Cc: dcraven <dcraven@berganpaulsen.com>
Sent: Wed, Aug 3, 2011 3:32 pm
Subject: [Fwd: FW: Request for Additional Explanations (Financial Information Provided at June 28 Work Session)]

Pat,

I forwarded your email to Dennis Craven yesterday after you had said he never replied. I also talked to him today about it. He went through his inbox, as well as junk mail folder. He then went through the firm's spam folder and couldn't find it there either. Below are his replies to your questions.

-Mike

----- Original Message -----
Subject: FW: Request for Additional Explanations (Financial Information Provided at June 28 Work Session)
From: "Dennis Craven" <dcraven@berganpaulsen.com>
Date: Wed, August 3, 2011 3:23 pm
To: "Louise From" <louisebob@mchsi.com>
mike-haverkamp@university-heights.org
Cc: jmaxwell@maxwellconstructioninc.com
"Kevin Monson" <KMonson@neumannmonson.com>

Louise and Mike:

The email below from Pat Bauer did not get to me until Mike Forwarded it yesterday.

My response is as follows. I would appreciate it if one of you would forward to Pat:

1. The present value calculation discounts the future cash flow stream back to the first tax TIF payment year, which is projected to be 2018 (based on 2016 assessment). The value of the space is the value of the space, there is no discount, and is based on an estimate of the current market value for white envelope commercial space in an upscale development.

The \$850,000 of offsite costs is the estimate of those costs, which is in current dollars.

Since I only took the PV calculation back to the first payment year (2018)

ATTACHMENT PAGE A7

the amounts are not all as of the same point in time. The discount increases by approximately \$1,000,000, from \$2,500,000 to \$3,500,000, when I take the PV back to 2014.

2. Not sure I understand the question. There is no present value calculation in the green highlighted section. The projected revenues and costs are those projected for the development. They are the amounts used in the calculation of the annualized rate of return.

3. The \$720,000 variance is partially due to rounding. The balance of it is inflation. "Completion" is assumed to be the year after building #2 goes on line. I incorporated a 1% inflation factor into the annual assessments. This results in some increase in value of the units from the point they are projected to be sold to the year the entire project is complete.

4. For TIF projection purposes I assumed all of the parking will be subject to residential roll back. Will not be the case but makes the projection more conservative.

5. Yes.

6. Yes it does. Annualized rate of return (also referred to as internal rate of return or IRR) is a calculation of the return to an investor based on the amount of the investment and the period of time it is invested, quoted on an annualized basis. It is the equivalent of the stated interest rate on a CD or savings account.

7. No. Hence, \$8,000,000 of TIF only increases the IRR from 5% to 10%.

8. Not exactly, but it is a more accurate relationship of the impact of TIF on the investor return calculation than the one referenced in question #7.

9. ARR is a complex calculation. Profit is only one component of the calculation. Your attempt to compute the impact of the TIF on the return in comment #7 ignores the factor of time. An analogy would be a bank advertising a return on a five year CD as being 5% but failing to mention that it is 5% over the entire life of the CD. The annualized rate of return in that example would be more like 1.2% not 5%. If the bank agreed to raise the interest rate by 1% from 5% to 6%, the customer's return on an annualized basis only increases from 1.2% to 1.4% not from 1.2% to 2.2%.

Dennis Craven

-----Original Message-----

From: mike-haverkamp@university-heights.org
[<mailto:mike-haverkamp@university-heights.org>]

Sent: Tuesday, August 02, 2011 8:14 AM

To: KMonson@neumannmonson.com; jmaxwell@maxwellconstructioninc.com; Dennis Craven

Subject: Fwd: Request for Additional Explanations (Financial Information Provided at June 28 Work Session)

ATTACHMENT PAGE A8

I'm forwarding this to you all as well as the other email I just found in my inbox.

-Mike

----- Original Message -----
Subject: Fwd: Request for Additional Explanations (Financial Information Provided at June 28 Work Session)
From: pbb338koser@aol.com
Date: Mon, August 1, 2011 11:20 pm
To: mike-haverkamp@university-heights.org
rosanne-hopson@university-heights.org
stan-laverman@university-heights.org
brennan-mcgrath@university-heights.org
pat-yeggy@university-heights.org
Cc: louise-from@university-heights.org
uhclerk@yahoo.com
ballard@lefflaw.com

As noted in the memo just submitted to City Councilors, I've not received any response to the following request for additional explanations from Mr. Craven.

If any Councilor feels that the explanations I requested would be of help to you in considering the OUP TIF request, I urge you to let Mr. Craven know of your interest in having such explanations furnished to you in advance of next Tuesday's council meeting.

-----Original Message-----
From: pbb338koser <pbb338koser@aol.com>
To: dcraven <dcraven@berganpaulsen.com>
Sent: Mon, Jul 25, 2011 9:30 am
Subject: Request for Additional Explanations (Financial Information Provided at June 28 Work Session)

Dear Mr. Craven,

Following my exchange of e-mails with Mayor From is a request for additional explanations of financial information contained in segments of the first page of the sheets presented at the June 28th University Heights City Council's work session.

If there's any need for this request to come directly from a councilor, please let me know and I'll pursue that route. Also as noted in my initial message to Mayor From, please don't hesitate to get back to me by phone if that would be a more efficient/effective way of addressing the questions I have.

Best regards,

Pat Bauer

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-----Original Message-----

From: Louise From <louisebob@mchsi.com>

To: pbb338koser <pbb338koser@aol.com>

Sent: Mon, Jul 25, 2011 9:17 am

Subject: RE: Request for Additional Explanations (For Possible Forwarding to Dennis Craven)

Pat,

Here is Dennis Craven's email: dcraven@berganpaulsen.com I just think it would be easier if you contact him directly.

Louise

From: pbb338koser@aol.com [<mailto:pbb338koser@aol.com>]

Sent: Sunday, July 24, 2011 8:50 PM

To: louisebob@mchsi.com

Subject: Request for Additional Explanations (For Possible Forwarding to Dennis Craven)

Dear Louise,

In attempting some further financial analyses of different elements of the OUP TIF request, I've encountered a few difficulties (stated below) with specific parts of provided information not "lining up" with other parts.

Dennis Craven offered at the last council meeting to respond to questions about provided financial information, but because I wasn't clear if his offer was limited to city officials, I'm routing this request for additional explanations to you in the hope that you will deem it appropriate to forward to him as a way of asking him to respond to questions raised by me (versus you endorsing in any way the questions I'm asking).

If you think this is something I should instead be doing directly, I certainly will do so if you can direct me towards Mr. Craven's e-mail address (I haven't been able to find in on e-mails I've received). I also would be happy to instead route my request through a councilor if you have any concerns about forwarding it as mayor on the understanding indicated above.

If you forward my request to Dennis Craven and it would be helpful for him to talk over with me anything below, he certainly can call me either during the day at 335-9014 or in the evening at 337-7446.

To complete the additional financial analyses I'm preparing in time to meet the August 3 "deadline" for public input incorporated into MPOJC's summary for next month's council meeting, it would be most helpful for me to receive the requested additional explanations from Mr. Craven by the

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end of the coming week (Friday, July 29).

As always, thanks in advance for any help you're able to provide me on this.

Best regards,

Pat

REQUEST FOR ADDITIONAL EXPLANATIONS

NOTE: Referenced figures appear in three highlighted sections of attached PDF (first page of financial information presented at June 28 work session).

NET VALUE OF TIF TO DEVELOPER (YELLOW HIGHLIGHTING)

1. Are all numbers in this section determined as of the same point in time (e.g., "present value"), and if so, is the point in time the same as those used in the other two highlighted sections?

FINANCIAL ANALYSIS (GREEN HIGHLIGHTING)

2. Once again, are all numbers in this section determined as of the same point in time (e.g., "present value"), and if so, is the point in time the same as those used in the other two highlighted sections?

3. "Total projected revenue (w/o TIF)" is \$53,200,000 and "[a]ssessed value of One University Place is assumed to be 90% of retail value." Although 90% of \$53,200,000 is \$47,880,000, "Assessed value at completion" stated in the preceding section (Comparison to Plaza Towers) is \$48,600,000. The difference is only \$720,000, but does it reflect some other variable not included in my "90% of total projected revenue" calculation.

4. How is the revenue from Parking (\$3,300,000) allocated between Commercial (\$3,000,000) and Residential (\$46,900,000)?

ATTACHMENT PAGE A11

5. Does "Total projected revenue (w/o TIF)" of \$53,200,000 minus "Total projected costs" of \$51,450,000 result in a "Total projected profit (w/o TIF)" (my own term for what seems to be a missing derived figure) of \$1,750,000?

PROJECTED DEVELOPER ANNUALIZED RATE OF RETURN (PINK HIGHLIGHTING)

6. Does the "Projected Developer Annualized Rate of Return - Without TIF" of 5.12% reflect something besides the "Total projected profit (w/o TIF)" of \$1,750,000 derived in Item 5, and if so, what are those other factors?

7. If "Projected Developer Annualized Rate of Return - Without TIF" of 5.12% is produced by "Total projected profit (w/o TIF)" of \$1,750,000, can each per percent of return appropriately be viewed as "encompassing" \$341,797 (i.e., \$1,750,00/5.12)?

8. If "Projected Developer Annualized Rate of Return - With TIF" of 10.16% is produced by "Net projected economic value to developer" of \$3,730,000 (from yellow highlighted section), can each per percent of the additional 5.04% return attributable to TIF (i.e., 10.16%-5.14%) appropriately be viewed as "encompassing" \$740,079 (i.e., \$3,730,000/5.04)?

9. What justifies the differences in the "relative" rates of return computed in Items 7 and 8? (Using the factor derived in Item 8 (\$740,079), the combination of non-TIF profit and TIF assistance (\$5,480,000) would seem to produce a "with TIF" return of 7.4%; in contrast, using the factor derived in Item 7 (\$341,797), the combination of non-TIF profit and TIF assistance (\$5,480,000) would seem to produce a "with TIF" return of 16.0%).

Ãfâ -â -

To ensure compliance with requirements imposed by the Internal Revenue Service, we must inform you that, unless specifically indicated otherwise, any tax advice contained in our written or electronic communications with you is not intended or written to be used, and cannot be used, to either 1) avoid tax-related penalties under the Internal Revenue Code; or 2) promote, market or recommend to another party any transaction or matter addressed in such communication.

To ensure compliance with requirements imposed by the Internal Revenue Service, we must inform you that, unless specifically indicated otherwise, any tax advice contained in our written or electronic communications with you is not intended or written to be used, and cannot be used, to either 1) avoid tax-related penalties under the Internal Revenue Code; or 2) promote, market or recommend to another party any transaction or matter addressed in such communication.

ATTACHMENT PAGE A12

MEMORANDUM

TO: University Heights City Councilors

DATE: August 9, 2011

FROM: Pat Bauer

RE: Comments on Jeff Maxwell's Responses to Steve Ballard's Memorandum Concerning Provisions Needing Consideration in Connection with OUP Development Agreement

INITIAL OBSERVATIONS

Back when Jeff Maxwell was seeking to have the zoning ordinance changed, he and others placed great emphasis on the ability to subsequently formulate more focused controls during the PUD application process. The capacity to do so was clearly reserved in both Ordinance No. 180 and the Conditional Zoning Agreement (see emphasized passages in attachment pages A1-A2). With the zoning change in hand, Mr. Maxwell has now done a striking "about face" with various responses amounting to claims that the project shouldn't be subject to restrictions unless they apply across the board to everyone else in University Heights.

This blatant example of "having your cake and eating it too" behavior conveniently ignores the fact that OUP involves a range of uses that presently do not exist elsewhere in our community. Restrictions tailored to the specific circumstances of OUP were promised along the way and should be imposed without the necessity of having to go through the efforts involved in determining how restrictions should be framed to function appropriately throughout the rest of University Heights. Our relatively small number of fairly basic ordinances may be entirely appropriate to the scale of our existing community, but with OUP "ramping things up" rather considerably, OUP-only regulations clearly are both in order and entirely legitimate.

A final initial observation is that Steve Ballard's memorandum outlines things the City should consider in order to protect the City's interests and Tom Gelman's responses presumably only involve things that would best serve the developer's interests. To more clearly present the nature of Steve Ballard's concerns and the character of Tom Gelman's responses, comments on approximately half of Tom's responses to Steve's numbered items are grouped below based on commonality of subject matter.

A. PERMISSIBLE COMMERCIAL USES (Items 9, 13, & 18)

Comments

Steve Ballard's memorandum consistently identifies provisions necessary to "careful control" of commercial uses, and Tom Gelman just as consistently disclaims the appropriateness of such provisions.

Item 9 is especially critical to the effectiveness of noise restrictions formulated with an eye towards the special circumstances OUP will present relative to other properties in town (see attachment page A3 (e-mail from Chris Luzzie describing need for specific addressing noise emanating from upper balconies and top floor of rear building)).

9. Law Enforcement on Property. The Council should consider requesting that the developer and those coming after the developer (owners of condominium units) agree that the University Heights Police Department may come upon the property in perpetuity to enforce all traffic signage and regulations on the property.

RESPONSE: The property should be subject to the same rules, regulations and laws as other properties in University Heights with regard to any official acts, whether of the police department or any other division of the City.

13. Restrictions on Commercial Uses/Hours of Operation. The Council should consider the types of businesses that are or are not permitted in the commercial portion of the development. Ordinance 79(6)(f)(2)(b) provides a broad list of permitted uses. The Council may wish to further refine or define those uses and further address hours of operation.

RESPONSE: The uses provided in the referenced ordinance are acceptable and have already been restricted by the Council adopting the ordinance. The matter has been addressed at Section 3.i of the Development Agreement.

Referenced Provision: "Commercial uses shall be limited to those uses specifically permitted by City ordinance, now or in the future, in a multi-family commercial zone. In the event such uses are modified by zoning amendment, previously existing permitted uses shall be grandfathered until such time as such use ceases to be operated for one year."

18. Limit Liquor Licenses. The Council may wish to consider limiting the number of liquor licenses or beer permits that may be issued for businesses located at the development. Doing so may be another measure useful to restricting permitted uses. The point may be that one restaurant would be great but 3 is too many.

RESPONSE: The Zoning Ordinance already sufficiently limits liquor licenses by precluding bars, saloons, taverns or drinking establishments in the multi-family commercial PUD zone.

B. REQUIRED COMMERCIAL USES (Item 16)

Comment

“[B]est commercially reasonable efforts” probably falls quite short of the expectations of residents initially impressed by suggestions of retail amenities of an implied quality and an assumed duration..

16. Grocery Store/Market. The Council should consider whether it desires to require that a portion of the commercial space be used for a grocery store/market.

RESPONSE: This matter is generally addressed at Section 8 of the Development Agreement and has been more specifically addressed in the developer's TIF proposal.

*Referenced Provision: "Developer will use Developer's **best commercially reasonable efforts** to secure a tenant or owner agreeing to operate a neighborhood grocery market/deli within one of the commercial units within the Project." (emphasis added)*

C. SUFFICIENCY OF PARKING (Items 6, 17, & 19)

Comments

“Having your cake and eating it too” seems an apt description of the developer’s position that a halving of surface parking spaces from 107 to 53 shouldn’t result in any constriction of permissible commercial uses.

The response to Item 17 substantially overstates the implications of the MPOJC report in at least three respects. First, the report assumed a limited mix of specific commercial uses (unlike the developer’s assertion of entitlement to freedom from any restrictions on uses beyond the outer limits established by the zoning ordinance). Second, even within that limited mix of specific uses, the report identified a likely parking deficit in the early evening. Third (and perhaps most significantly), based on the absence of an available objective foundational measure, the report included no assessment of the parking requirements attributable to a neighborhood grocery store.

Some “nose of the camel in the tent” effects are evident in Item 6 (expansion of parking not be restricted by condominium documents) and also from the absence of a clear recognition in Item 19 that expanding the number of parking spaces beyond 55 will necessitate a change in the City’s zoning ordinance (see Ord. 79, sec. 13.B.6. (“A minimum of one hundred eighty-five (185) off-street parking spaces, of which no more than fifty-five (55) may be above ground, shall be provided for commercial and residential uses.”)).

6. Changes to Condominium Documents. The Council should consider whether to require that any substantive changes to the condominium documents that will be drafted must be approved by the Council to be effective. The Council particularly may wish to have such a requirement concerning changes to the rules and regulations governing the development.

RESPONSE: Section 3 of the Development Agreement addresses condominium documents. Items a through n represent covenants required to be incorporated into the Condominium Declaration that “shall be enforceable by the City (in addition to the Association and/or unit owners) and shall not be permitted to be amended, deleted or otherwise modified without approval of the City by appropriate resolution of the City Council”.

Unreferenced Provision: Development Agreement sec. 3.o. provides that “[t]he Developer and/or the owners’ association shall have the right to convert green space within the Project into additional surface parking if approved by the City Council and consistent with the applicable zoning ordinances.” Both response and development agreement thus exclude an expansion of parking space from the set of covenants enforceable by unit owners (removes.

17. Parking. The Council should consider whether the proposed parking is sufficient for the development and the types of commercial uses contemplated.

RESPONSE: The PUD plan contains 53 proposed service parking spaces out of the 55 maximum permitted by the Zoning Ordinance. The MPO-JC report indicated that this was sufficient surface parking.

19. “Land Banking” Green Space. MPO-JC has raised the possibility of the Council requiring that certain green space be kept available for conversion into surface parking if some specified triggering event occurs in the future. The triggering event might be something like (i) a future finding and Resolution by the Council that parking is inadequate or (ii) the establishment of a certain number of a certain types of businesses at the proposed development (e.g., if there’s 3 restaurants, the green space becomes or may become parking).

RESPONSE: There has been added to the Development Agreement (Section 3.o) a provision that would allow the developer the ability to convert green space into additional surface parking if approved by resolution of the City Council.

D. LEASING OF RESIDENTIAL UNITS (Items 7 & 25)

Comments

Here again the developer asserts a right to be free from any restrictions specific to OUP even though such restrictions (i) clearly are allowed by both Ord. No. 180 and the Conditional Zoning Agreement (see attachment pages A1-A2) and (ii) clearly are necessary by virtue of OUP involving uses unlike those permitted anywhere else in University Heights.

7. Rental/Leasing of Residential Units. The Council should decide whether it is agreeable to permitting some or all of the residential units in the development to be rented or leased. The Council may propose that no units be leased; or that only units in one building may be leased; or that no more than a specified number of units may be leased; or some other description of limits on leasing.

RESPONSE: Section 3.j of the Development Agreement incorporates the City's zoning definition of "family" to control appropriate residential use. The developer does not wish to otherwise have restrictions on leasing residential units that are not applicable generally in University Heights, and believes that any such restrictions would be discriminatory.

25. Number of Residential Rentals. If residential units will be permitted to be leased, does the Council desire to limit the number?

RESPONSE: See response to paragraph 7.

E. TIME LINE FOR CONSTRUCTION OF PROJECT (Items 15 & 21)

Comments

The responses to these two items exemplify the highly speculative effects involved in considering a PUD application and development agreement well in advance of any decision by the Church to move. The extent of the developer's "commitment" (if the word is capable of being stretched to such length) is to "use all reasonable efforts to complete construction of [a] phase ... within two years after the commencement [of] such phase" with commencement of the first phase occurring no later than ten(!) years from now.

The response to Item 21 mentions the possibility that the Church may not sell now but subsequently might decide at some later date to then sell either to Jeff Maxwell or some other totally unrelated developer. This explicit effort to accommodate such possibilities within the responses to these "time line" items underscores the importance of the elements of "identity and background of developer" and "persons bound and restrictions on transfer" subsequently discussed in Sections G and H of this memorandum.

15. Timing of Construction. The Council may wish to provide that construction on the proposed development must commence by a certain date and be completed by a certain date.

RESPONSE: Timing of construction is addressed at Section 7 of the Development Agreement.

Referenced Provision: “The Project is likely to be built in phases: Phase One being the south commercial /residential building, and Phase Two being the north residential building. Once construction commences on each Phase, Developer shall use all reasonable efforts to complete construction of such phase as efficiently and in as timely a manner as the parameters of the project permit and to be substantially completed within two years after the commencement date for such phase.

21. Conditioning PUD Approval on Land Sale Timely Construction. The Council may wish to consider provisions that the PUD Plan Application approval terminates if St. Andrew Presbyterian Church votes not to sell the property or if the project is not completed in a given time. This issue also may be addressed separately in a provision that requires commencement and completion by certain dates.

RESPONSE: It would seem inappropriate to condition PUD approval on the Church's decisions. The Church could decide in the near term not to sell the property, but after further consideration in the longer term might again decide to sell the property, at which time an approved PUD plan could still be viable to the same or a different developer. Any modification to the plan would in any event require Council approval. All of this is speculative and it would seem unnecessary from the City's standpoint to add conditions based on what the Church may or may not do. In reference to time frame, it seems unnecessary to place a time constraint, but if the City Council feels compelled to do so, then it is suggested that perhaps ten years would be a reasonable time frame in which to require commencement of the project or expiration of the PUD Plan approval. No time limit should be imposed that would result in the expiration of an approved PUD after such a project has been commenced.

F. RELATIONSHIP TO TIF (Item 20)

Comments

As reported in the minutes of the City Council’s June 29th TIF work session, “Gelman stated that the project cannot happen if the TIF financing is not approved” and “Monson stated that ... there is no ‘plan B’”. Unless those statements were false when made, it defies reason to contend that the Development Agreement can possibly be approved prior to effective resolution of the developer’s existing request for TIF assistance. The possibility those earlier statements might now be characterized as “inoperative” merely underscores the imperative need for great critical caution in assessing the accuracy and reliability of other developer representations made before or hereafter.

20. TIF. Does the Council desire to condition approval of the PUD Plan Application on establishing the requested TIF? Are there other TIF points the Council would like to address in the Development Agreement?

RESPONSE: TIF matters will be addressed in a separate TIF Agreement to be entered into between the City and the developer should TIF be approved. The Zoning Ordinance already requires an approved PUD plan before the property can be developed under any circumstances. The Development Agreement need not address the TIF issue.

G. IDENTITY AND BACKGROUND OF DEVELOPER (Items 33 & 34) [newly added items - no response yet by developer]

Comments

Although the developer has not yet responded to these newly added items, the rather predictable nature of such responses warrants the observation that (as reported in the minutes of the City Council’s June 29th TIF work session) “Craven stated the Maxwell development most closely

resembles the Plaza Towers project in Iowa City” and that both of these items were required in connection in connection with that project. Item 34 obviously is appropriate if the City Council is counting on Maxwell going forward to do the things he is saying he is going to do, and Item 33 is equally essential to protect University Heights from the problems that could arise if Maxwell wants to turn the project over to someone else as soon as the Church decides to sell or (as previously noted in Section E) if the church decides not to sell now but at some later point in time wishes to sell either to Maxwell or to some totally unrelated developer.

33. *Restriction on Transfer to Entities Not Owned or Controlled by Jeff Maxwell.* The Council may wish to restrict the transfer or assignment of the Development Agreement to persons other than Jeff Maxwell or to entities not owned or controlled by him. Similarly, the Council may wish to condition its approval of the PUD Application on continued ownership by Mr. Maxwell or an entity owned or controlled by him. The thought behind such restrictions and conditions is that the qualifications and identity of the person/group proposing redevelopment (here Mr. Maxwell) are important to the Council and were significant reasons for entering into the Development Agreement (if it is entered into) and for approving the PUD Application (if it is approved).

34. *Statement of Qualifications of Developer.* The Council may wish to require that Jeff Maxwell provide a statement as to his qualifications and background for undertaking and completing a project such as the one proposed. This information may be important to the Council in determining whether to enter into a Development Agreement or to approve the PUD Application. The information sought could include such things as the identity of all owners and directors of any corporate or other legal entity involved in ownership or the development; financial references and background; other projects that have been developed; D/B/As or other names or entities by or through which the developer has conducted business in the past and present; and financial resources available for developer to complete financing of the proposed development. I would be happy to prepare a list of such requirements at the Council's direction.

H. PERSONS BOUND AND RESTRICTIONS ON TRANSFER (Items 1 & 32)

Comments

In still further instances of wanting to “have his cake and eat it too,” the developer wants to bind the City without the Church being bound to the City in return. The suggestion in the response to Item 1 that the Development Agreement is somehow personal to Mr. Maxwell is quite at odds with the “it should be available to others” contentions previously discussed in Sections E and G.

The response to Item 32 is characteristic of the evasiveness apparent in some other communications with the developer. Obviously a sale to a tax-exempt entity before TIF payments are completed might reduce (in the case of a partial sale) or eliminate (in the case of a complete sale) the developer’s ability to receive such payments. Once TIF payments are completed, however, the developer seems totally oblivious to the circumstance that subsequent sales to tax-exempt entities would reduce or eliminate the “payback” that has been a central motivating factor of the support the project has received from some councilors and some residents.

As has been detailed previously (“Financial Issues Presented by OUP TIF Request” (July 10, 2011), Appendix Page A4), the net present value “break-even” points would not have occurred until the 26th year (under the 80/20 scenario that would have prevailed if Johnson County had been willing to provide TIF assistance) and will not occur until the 30th year under the presumably now operative 100/0 “city alone” scenario. Needless to say, any sales to tax-exempt entities before the

break-even points will result in tax receipt having been allocated to the developer in excess of those ultimately paid to local governments.

1. Parties to Agreement. The Council should consider whether St. Andrew Presbyterian Church should be a party to the Development Agreement. Mr. Maxwell, as owner of a portion of the property proposed for development and as the proposed developer presently is a party in the draft version. The Council may desire that the church also undertake the commitments set forth in the Agreement.

RESPONSE: St. Andrew Presbyterian Church need not be a party to the Agreement. St. Andrew Presbyterian Church is not the applicant nor would the Church at any time, under any circumstances, be likely to become the developer of the property. The ordinance specifically requires the developer to enter into an agreement with the City, not the property owner. Jeff Maxwell is the PUD Plan applicant/developer, and also either the owner or contract purchaser of the entire development parcel. Once a plan is approved, any party that develops the property according to the plan would be required to abide by the Development Agreement or enter into a separate new agreement with the City in connection with any modified plan.

32. Restriction on Transfer to Tax-Exempt Entity. The Council may wish to prohibit any sale or transfer of all or part of the proposed development to tax-exempt entities. Some such entities (like the church, for example) do not pay property taxes. To the extent portions of the proposed development are transferred to such an entity, the TIF component, if there is one, of the development may be affected.

RESPONSE: If TIF is provided as a means to support the project, there will be an incentive for the developer not to sell to tax exempt entities (other than a portion of the project slated for possible transfer to the City). Reduced tax revenue will slow down the tax rebate and increase the possibility that the full rebate amount may not be reached. On the other hand, the developer would not wish to be absolutely restricted from making a sale to a tax exempt entity.

I. MISCELLANEOUS MATTERS (Items 3, 12, & 26)

Comments

The response to Item 3 presumably meant to cite draft development agreement section 2.a.iv., but the response to Item 26 fails to recognize that that section is not responsive to the “fountain/sculpture/etc.” circumstance Item 26 is addressing.

By omission, the response to Item 12 confirms the developer’s unwillingness to accept responsibility for the snow removal difficulties caused the curb/sidewalk realignment possibilities described in section 2 of City Engineer Staff Report # 1 (August 4, 2011).

3. Exterior Amenities. The Council may desire that certain exterior amenities, perhaps including benches, book drop, and bicycle racks be shown and specified in site or building plans.

RESPONSE: Exterior amenities are addressed at Section 2.a.v of the Development Agreement.

12. Snow Removal. The Council should consider whether to require the developer to be responsible in perpetuity for the removal of snow and ice on certain City sidewalks, including those on the north and south sides of Melrose Avenue beginning at Sunset Street and proceeding west to a specified distance. The sidewalk on the south of Melrose Avenue will be closer to the street, from what I understand of the plans, which may lead to additional deposits of snow and ice from plows clearing the street.

RESPONSE: The developer will remove snow and ice on sidewalks along the north side of Melrose adjacent to the project as provided at Sections 3.k and 3.n of the Development Agreement.

26. OUP Entrance Design Elements. The Council may wish to require approval of specific plans for the entrance to the proposed development. Different ideas have been suggested - a fountain, a community common area, a sculpture. The Council may wish to have a say in how this area is presented.

RESPONSE: See response to paragraph 3.

Referenced Provision: "Landscaping Plan showing species and size of plantings as well as amenities including but not limited to walkways, benches, bicycle racks, and trash receptacles." (draft development agreement section 2.a.iv.)

ORDINANCE NO. 180

AN ORDINANCE AMENDING ORDINANCE NO. 79 (ZONING) TO REQUIRE THAT A DEVELOPER OWN THE REAL PROPERTY IDENTIFIED IN A MULTIPLE-FAMILY COMMERCIAL PUD APPLICATION

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF UNIVERSITY HEIGHTS, JOHNSON COUNTY, IOWA:

* * *

- F. Property in a Multiple-Family Commercial zone shall be used for the following purposes only:
1. All uses which are allowed in an R-1 Single-Family Residential Zone, subject to the height restrictions, yard regulations, lot regulations, and off-street parking regulations specified for the R-1 Single-Family Residential Zone in Sections 7, 8, 9, and 10 of this Ordinance.
 2. **As provided in or limited by the Development Agreement** between the City of University Heights and the Developer **pursuant to the Multiple-Family Commercial Planned Unit Development (PUD) regulations and requirements set forth in Section 13 of this Ordinance.**

* * *

Section 13. Multiple-Family Commercial PUD.

- B. Development Regulations and Restrictions. Property may be developed as a Multiple-Family Commercial PUD Zone pursuant to the following regulations and restrictions:

* * *

8. **The University Heights City Council may impose additional reasonable conditions as it deems necessary** to ensure that the development is compatible with adjacent land uses, will not overburden public services and facilities, and will not be detrimental to public health, safety, and welfare.

- C. Procedure.

3. **The University Heights City Council in its sole discretion may approve, deny, or approve on condition any such Plan Application or any part thereof.**

CONDITIONAL ZONING AGREEMENT

This agreement is made between the City of University Heights, Iowa, a municipal corporation (hereinafter referred to as "City"), St. Andrew Presbyterian Church and MidWestOne Bank (hereinafter together referred to as "Owners"), and Jeffrey L. Maxwell (hereinafter referred to as "Developer").

* * *

6. In consideration of the City's rezoning Owners' property, Developer agrees to, and Owners accept, the following conditions:

* * *

- b. that **Owners and Developer shall not challenge the authority of the City Council to further regulate the development of the subject property under a Multiple-Family Commercial Planned Unit Development (PUD) Agreement, as provided in the City's Zoning Ordinance, as amended, including but not limited to regulation regarding site design and building elevations, vehicular access, landscaping and common open space, restrictions on types of commercial uses and hours of operation for such uses, restrictions on leasing of residential dwellings, and amenities to serve the residents and businesses of the development,** provided the City Council's exercise of such regulatory authority is in accordance with the City Council's zoning authority under such Zoning Ordinance, as amended, and is not arbitrary, capricious, discriminatory or otherwise an abuse of its discretionary zoning authority relative to Planned Unit Developments or otherwise a violation of applicable laws.

* * *

7. Owners, Developer, and the City acknowledge that the conditions contained herein are reasonable conditions to impose on the land under Iowa Code §414.5, and that said conditions satisfy public needs that are caused by the requested zoning change.

From: CLuzzie@aol.com
To: ballard@lefflaw.com, brennan-mcgrath@university-heights.org, uhclerk@yahoo.com,
louise-from@university-heights.org, mike-haverkamp@university-heights.org,
pat-yeggy@university-heights.org, rosanne-hopson@university-heights.org,
stan-laverman@university-heights.org
Sent: 7/24/2011 7:33:08 P.M. Central Daylight Time
Subj: PUD Development Agreement items

In looking over the draft development agreement included in the July 12 agenda attachments, I believe the subject of noise and music should be addressed in greater detail.

Currently, the draft agreement says that occupants, owners and guests must comply with the city's noise ordinance. Section 3(g). Such a general provision might be adequate for ordinary residential properties but the Maxwell development includes commercial uses, balconies, and patio areas on the top floor of the rear building. Music piped outside on commercial outdoor space or on a balcony or the top floor of the rear building can project noise more regularly and much farther than someone having a back yard party once a year.

Allowing commercial space to be open until midnight both Friday and Saturday nights may seriously impinge on the quiet enjoyment of neighboring homes (a concern residents near Stella have mentioned when, in nice weather, the patio areas are used and the windows on some nearby residences are open). Section 3(h). Music played on the top floor of the back building or on balconies of upper floors could easily reach residents living at considerable distances from the development.

This is an area where a bit of prevention would save all of us hassles with noise enforcement. I would suggest prohibiting any outside speakers (either permanent or temporary) on all balconies, the top floor of the back building, or any commercial areas.

I also would strongly suggest requiring that the outside space of commercial uses be closed much sooner than midnight. Many people go to bed long before midnight and would not appreciate loud noise that late at night.

Thank you for your consideration.

Chris Luzzie
338 Koser Avenue