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February 21, 2023

VIA E-MAIL ONLY

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RE: Public Comment RES PH 23-36

Dear Members of the Saint Paul City Council:

We represent the plaintiffs in the ongoing lawsuit *H A B, Inc., et al. v. City of St. Paul, et al.*, Court File No. 62-cv-22-4915. Several of my clients and other interested parties will be appearing live; but in light of the impending snowstorm, I ask that these comments be made part of the public record on Agenda Item No. 22. At present, we are challenging, the City's authority to provide \$1.4 million in unallocated tax-increment financing funds to an unregulated day shelter as a forgivable ten-year loan. The City and its Housing & Development Authority have maintained the position that a temporary TIF spending statute, Minn. Stat. § 469.176, subd. 4n, provides such authority. It has been the plaintiffs' contention that the City and the HRA have failed comply with the plain requirements of that statute. In our view, the Resolution being considered as Agenda Item No. 22 at the February 22, 2023 council meeting continues to fail to abide by the plain terms of Minn. Stat. § 469.176, subd. 4n.

Under Minn. Stat. § 469.176, subd. 4n(a)(1), no increment can be transferred by the HRA until "after creating a written spending plan that authorizes the authority to take the action ... and details the use of transferred increment." *Id.*, subd. 4n(c). And no increment can be transferred until after the City approves that spending plan "after holding a public hearing." *Id.* In other words, the HRA is precluded from transferring any amount of TIF increment until it creates a written spending plan that details how such increment will be used and the City approves the plan and use of the funds after a public hearing.



The HRA and the City have attempted to comply with these preconditions for a transfer two times prior. In June of 2022, the HRA created and the City approved a vague spending plan outlining general categories of projects that may benefit from unallocated TIF transfers without any specific details as to how those transfers will be used in fact. We have challenged that spending plan for its lack of statutorily required specificity as to the use of public funds, as well as for the lack of the City to afford proper notice of the public hearing where it approved such plan.

Recognizing that proper public input as to the use of the public's monies is a critical component of civic government, the City in September of 2022 noticed and held a public hearing where it approved an identical spending plan to the one it approved in June. This spending plan was similarly invalid for want of the specificity clearly required under the plain language of Minn. Stat. § 469.176, subd. 4n. And that lack of specificity kept the public in the dark as to the true intended use of the funds it sought to use to support any number of unspecified private development projects.

After Judge Castro issued his written decision on January 6, 2023, the HRA intends to pass a "supplemental" spending plan informing the public of one intended use of unallocated TIF increment under the statute—"a forgivable loan of up to \$1,400,000 to Listening House of St. Paul, Incorporated for a private facility serving unsheltered populations at 421 East 7th Street in the City."

Although the HRA and the City have at last made an attempt to correct the deficiencies of their prior spending plans, the current plan up for approval should not be passed as "supplemental." First, it vastly alters the scope of unallocated TIF increment at the HRA's disposal, from a purported \$28,150,000 down to the \$6,400,000 contemplated in the current proposal. This clearly reflects a shift in the fiscal goals between the two plans such that they cannot be considered one and the same. It is not clear to the public from the face of the "supplemental" plan whether it reaffirms the \$28 million commitment, adds to that commitment, or does away with that goal entirely. Accordingly, the plans differ in significant material respects, and one cannot truly be considered to be merely "supplemental" to the other.

Second, and most importantly, the HRA lacks the authority to make the transfers contained in the plan by the very statute it invokes. The statute is clear and unequivocal—"The authority to transfer increments under this subdivision expires on December 31, 2022." Minn. Stat. § 469.176, subd. 4n(f). There is thus no authority to transfer the identified increments, because any authority to transfer unallocated TIF increment has expired well before the hearing. And as previously explained, without the City's approval at a public hearing, there can be no transfer of increment.

There is simply no longer statutory authority for the HRA to propose, or the City to approve, the expenditures identified in RES PH 23-36. We ask that the City postpone and withhold its approval accordingly. Further, there is a mandatory mediation ordered in Civil Case No. 62-cv-22-4915 and we ask that any decision be tabled until after that mediation.

In the event the HRA or the City intends to continue with spending public money to assist the Listening House, we respectfully request that the City and/or the HRA impose common-sense conditions upon those funds to ensure that Listening House serves its mission with minimal disruption to its neighbors and members of its community. We propose that the City place conditions upon the use of public funds to support Listening House's operations on East Seventh commensurate with those imposed upon Listening House's operations at its current Maria Avenue location, reached through a settlement in response to the City's own lawsuit:

- Listening House was "limited to uses that are low profile, generate limited traffic, are compatible with the church's presence in the community, and have the potential to complement the activities of the church;"
- Listening House "shall meet the standards and conditions for 'home occupation' as listed in Section 65.141 b, c, g and h of the Zoning Code;"
- Listening House must coordinate with the church "to prevent scheduling of multiple events that, taken together, would generate considerable traffic and congest neighborhood streets;"
- "Hours of operation shall be limited to 9:00 AM to 5:00 PM;"
- Listening House must "encourage its guests to leave the Listening House area after Listening House has closed and will provide bus fare to its guests in need. Listening House staff must be on-site one-half hour before and one-half hour after the times guests are served at the facility;"
- Listening House "will not allow the consumption of alcohol or controlled substances;"
- Listening House "will call emergency services when Listening House observes a guest behaving in a manner that poses an imminent threat of bodily harm to self or others;"

- Listening House “will not construct or use an outdoor patio on church property” for “Listening House program activities,” and any outdoor activities must be “screened from view” with “landscaping or a fence;”
- Listening House must “review on a daily basis its own camera footage to identify issues of concern and potential intervention;” and
- Listening House must limit its number of guests so as not to exceed “the number of persons permitted by the Minnesota State Building Code, Minnesota Fire Code or any other applicable law during hours of operation.”

We also request additional conditions be imposed reflecting the lessons learned from the well-documented difficulties with Listening House’s defunct Freedom House location on West Seventh:

- Listening House’s operations must be reviewed annually or they do not receive \$140,000 annual forgiveness of the loan. A public hearing must be held with a greater than 2-minute comment period before the \$140,000 loan payment is forgiven for another year.
- Listening House will not allow possession, use, consumption, or sales of alcohol or illegal and/or controlled substances and drugs inside the Listening House building or outside the building within a 2,500-foot radius by their “guests” or staff.
- Listening House will prohibit possession of weapons of any kind inside the Listening House building or within a 2,500-foot radius.
- A weapons search or metal detector screening will be conducted as a condition to entry.
- Listening House will provide 24-hour on-site security in and around their building as well as at least 8 exterior security cameras and at least 6 interior security cameras. All security camera recordings must be archived (with the security company) for a minimum of 12 months.
- Listening House must provide full cooperation with the Saint Paul Police Department and/or Ramsey County Sheriff, including identification of “guests”. Listening House must provide full access of any and all security camera footage to law enforcement. Listening House will also assist the

Saint Paul Police Department and/or Ramsey County Sheriff in dispersing its “guests” at closing time and discourage any loitering as that term is defined in § 272.03-05 of the St. Paul Code.

- Data is to be collected daily, weekly, monthly, and annually to track how many individuals Listening House helps get off the streets and into safe and stable housing due to the services they provide. If overnight shelter is secured, to whom, where, when, and for how long will be recorded. If nightly bus or transportation is to be provided, where, when, and was an overnight bed secured will be recorded.
- Listening House is responsible for clean-up of all trash, including, but not limited to, food containers/wrappers, food, bags of any type, condoms, feces, clothing, syringes, beverage containers, toilet paper, napkins, and any other discarded items outside the Listening House building within a 500-foot radius.
- Listening House must have at least one employee on-site for a minimum of 30-minutes before and 30-minutes after the approved Listening House operating hours.
- Listening House must provide transportation to overnight homeless shelters or other housing providers.
- Listening House officials agree to attend community policing meetings.

We thank you for the opportunity to provide written comments regarding this matter of urgent public importance, and again would ask that this Resolution be tabled until after the mediation in Civil Case No. 62-cv-22-4915 is held.

Regards,

LARSON • KING, LLP

s/ Patrick H. O'Neill, Jr.

PATRICK H. O'NEILL, JR.

PHO

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[Written Submission Re Feb. 22 Public Hearing.pdf](#)

SENT ON BEHALF OF PATRICK H. O'NEILL, JR.

Please see the attached correspondence from Mr. O'Neill concerning the above-referenced matter. Please contact him with any questions.

Thank you.



Kim Lewis

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