

DATE: July 2, 2013
STAFF: John Voss

AGENDA ITEM SUMMARY
FORT COLLINS URBAN RENEWAL
AUTHORITY

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SUBJECT

Resolution No. 060 of the Fort Collins Urban Renewal Authority Expressing the Board's Intent Related to the Use of Tax Protest Covenants in Connection with Redevelopment Projects for the Fort Collins Urban Renewal Authority.

EXECUTIVE SUMMARY

Redevelopment agreements have generally required that an instrument be recorded to restrict the protest of property tax valuations on the redeveloped property, a restriction that protects the interests of the Authority by preventing the reduction of tax increment revenues. This restriction needs to be waived because, in certain circumstances, it could cause certain tax revenues to be viewed as "private payments," which could then make the bonds in URA refinancing "taxable." If taxable bonds are issued, the URA's borrowing cost increases. The proposed resolution will authorize the Executive Director to modify and waive Tax Protest Covenants for the benefit of the URA.

BACKGROUND / DISCUSSION

In the past the URA has used Tax Protest Covenants to protect the interest of the Authority by preventing the reduction of tax increment revenues.

With one exception, the method used to financially support redevelopment in the North College Project Area is a lump sum paid at the completion of the project. This method requires borrowing from the City until refinancing to external investors becomes feasible. Most of the associated redevelopment agreements include a "no protest clause" for the purpose of protecting the URA's ability to repay loans.

However, the current language in the "no protest covenant" potentially affects the taxability of the bonds, changing them from tax exempt to taxable. This makes refinancing more expensive.

The proposed Resolution will authorize the Executive Director to modify and waive Tax Protest Covenants, as needed, to benefit the URA. The Resolution directs staff to negotiate terms in future Tax Protest Covenants that protects the URA without negatively impacting the tax status of future or existing URA bonds.

The "no protest covenant" is not unique to agreements in the North College Project Area; it also exists in the Summit (Capstone) agreement, which will likely be refinanced in the future. These and other future agreements will include a provision allowing the Executive Director to waive that covenant when it benefits the URA.

FINANCIAL / ECONOMIC IMPACTS

Adoption of the Resolution will allow the North College refinancing to be done at a more affordable interest rate. The URA's ability to repay their loan obligations is not expected to be significantly affected by a taxpayer successfully protesting their property tax assessment in the North College Area.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

ATTACHMENTS

1. Powerpoint presentation

Modifying Redevelopment Agreements

FC Urban Renewal Authority Board
July 2, 2013

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No Protest Covenant

- Bars owners/developers from protesting their property tax assessment
 - Protects the URA who relies on preconstruction tax estimates in the formation of Redevelopment Agreements
- In current form may result in a taxable financing transaction
 - Higher interest rates
 - Higher costs to URA

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Agreements Affected by Covenant

- North College Marketplace, JAX and Kaufman Robinson agreements have a covenant that needs to be modified to be treated as tax exempt.
- The Summit (Capstone) agreement will need to be modified, if intending to refinance down the road
- Future agreements will have a modified provision allowing Executive Director to waive that covenant when it benefits the URA

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Modification of North College Agreements

- Resolution authorizes the Executive Director to modify and waive Tax Protest Covenants as needed to benefit the URA
- May continue to use Tax Protest Covenants but directs staff to negotiate terms in future Tax Protest Covenants that protects the URA without negatively impacting the tax status of future or existing URA bonds

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GOING FORWARD

Financial Support – Two Approaches

- Repay over time
 - Preferred method
 - Commit a percent of actual TIF collections, with a cap
 - ‘No protest covenant’ is usually not needed – lower taxes reduces the reimbursement owners receive
- Lump sum at completion of project
 - Fall back method when other options are not viable
 - Requires borrowing from City and/or External Investors
 - Include ‘no protest clause’ AND the ability to waive this administratively in the event of a refinance

RESOLUTION NO. 060
OF THE BOARD OF COMMISSIONERS OF THE
FORT COLLINS URBAN RENEWAL AUTHORITY
EXPRESSING THE BOARD'S INTENT
RELATED TO THE USE OF TAX PROTEST COVENANTS
IN CONNECTION WITH REDEVELOPMENT PROJECTS
FOR THE FORT COLLINS URBAN RENEWAL AUTHORITY

WHEREAS, the Board of Commissioners (the "Board") of the Fort Collins Urban Renewal Authority (the "Authority") has previously approved various redevelopment agreements in the North College Urban Renewal Area and, more recently, in the Midtown Urban Renewal Area, which have provided for reimbursement of expenditures in connection with specified public improvements constructed for the purpose of eradicating blight conditions in those areas (collectively, the "Agreements"); and

WHEREAS, the Agreements have generally included a provision restricting the protest of property tax valuations on the redeveloped property and requiring that an instrument establishing the restriction be recorded in order to protect the interests of the Authority by preventing the reduction of the tax increment revenues that are generated by the redeveloped properties and used to fund the Authority's reimbursement obligations (a "Tax Protest Covenant"); and

WHEREAS, the Board has previously expressed a desire that the Agreements, and redevelopment agreements in general, include a Tax Protest Covenant to reduce the risk to the Authority in connection with reimbursements for redevelopment projects; and

WHEREAS, on June 18, 2013, the Authority authorized the issuance of certain tax-exempt bonds (the "Bonds") pursuant to Resolution No. 058 of the Board to refinance certain outstanding obligations of the Authority; and

WHEREAS, it is desirable that the Bonds be issued as tax-exempt obligations for federal tax purposes in order to reduce the interest costs on the Bonds; and

WHEREAS, in order for the interest on the Bonds to be exempt from federal income taxes, the Authority must comply with certain rules and regulations promulgated by the Internal Revenue Service; and

WHEREAS, under such rules and regulations, restrictions on the protest of property tax valuations may, in certain circumstances, cause the Authority's bonds to be taxable, which would increase the borrowing costs of the Authority; and

WHEREAS, in order to issue the Bonds on a tax-exempt basis, as well as to facilitate the issuance of future tax-exempt bonds by the Authority, the Authority's Executive Director has determined that it would be advantageous to modify the Agreements so as to eliminate the Tax Protest Covenant requirement, and to express the Board's intent that Tax Protest Covenants for the

benefit of the Authority that have been recorded and that are effective as of the date of this Resolution shall be waived and released, and shall no longer be in full force and effect; and

WHEREAS, in addition, the Executive Director has recommended that future Tax Protest Covenants and redevelopment agreements be structured to maximize the protections for the Authority without negatively impacting the tax-exempt status of existing or future Authority bonds; and

WHEREAS, in light of the Board's prior approvals of each of the Agreements containing a Tax Protest Covenant, as well as the Board's general expression of intent that Tax Protest Covenants be included in redevelopment agreements presented for approval, the Executive Director has asked the Board to take formal action to authorize him to make the modifications to the Agreements and related instruments as described in this Resolution; and

WHEREAS, it is the Board's intent to authorize the Executive Director to make such modifications and take such actions related to the Agreements as may be necessary in connection with the issuance of the Bonds as tax-exempt obligations or future tax-exempt bonds of the Authority.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE FORT COLLINS URBAN RENEWAL AUTHORITY as follows:

Section 1. That the Board hereby expresses its intent that Tax Protest Covenants be utilized by the Authority only in a manner that preserves the Authority's ability to issue tax-exempt bonds payable from tax increment revenues of the Authority.

Section 2. That the Board hereby authorizes the Executive Director to modify the Agreements so as to eliminate or revise the Tax Protest Covenants, and to provide that any Tax Protest Covenants recorded as of the date of this Resolution are waived and released, are of no further force and effect and shall not be enforced by the Authority. The Board hereby further authorizes the Executive Director to record in the real estate records of Larimer County, a notice that such Tax Protest Covenants have been waived and released, are of no further force and effect, and shall not be enforced by the Authority.

Section 3. That the Board hereby authorizes and directs the Executive Director to negotiate terms of pending and future Tax Protest Covenants and redevelopment agreements so as to maximize the protections for the Authority without negatively impacting the tax-exempt status of outstanding Authority bonds or the ability of the Authority to issue tax-exempt bonds in the future.

Passed and adopted at a regular meeting of the Board of Commissioners of the City of Fort Collins Urban Renewal Authority this 2nd day of July A.D. 2013.

Chairperson

ATTEST:

Secretary