

RESOLUTION 80-16

Inducement Resolution for Economic Development Revenue Bonds  
for Bloomington Plaza Company, and Kroger, Company

WHEREAS, the City of Bloomington, Indiana (the "Issuer") is authorized by IC 18-6-4.5 (the "Act") to issue revenue bonds for the financing of economic development facilities, the funds from said financing to be used for the acquisition, construction and equipping of said facilities, and said facilities to be either sold or leased to a company or directly owned by a company; and

WHEREAS, Bloomington Plaza Company, an Indiana limited partnership and Kroger, Co., (collectively, the "Applicant") has advised the Bloomington Economic Development Commission (the "Commission") and the Issuer that it proposes that the Issuer either acquire, construct and equip an economic development facility and sell or lease the same to the Applicant or loan proceeds of an economic development financing facility to be a 153,000 square foot shopping center facility for the retail sale of groceries and other products, including the real estate on which it is located and the machinery and equipment to be installed therein, to be located at the SE corner of Covenanter & College Mall Road, in Bloomington, Indiana, on an approximate 15 acre tract of land ("Project"); and

WHEREAS, the diversification of industry and increase in job opportunities (160 new jobs) to be achieved by the construction and equipping of the Project will be of public benefit to the health, safety and general welfare of the Issuer and its citizens; and

WHEREAS, Bloomington Plaza Company will lease the Project to Kroger Company; and;

WHEREAS, having received the advice of the Bloomington Economic Development Commission, it would appear that the financing of the Project would be of public benefit to the health, safety and general welfare of the Issuer and its citizens; and

WHEREAS, the acquisition and construction of the facility will not have an adverse competitive effect on any similar facility already constructed or operating in Bloomington, Indiana;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION I. The Common Council of the City of Bloomington finds, determines, ratifies and confirms that the promotion of diversification of economic development and job opportunities in and near Bloomington, Indiana, is desirable to preserve the health, safety and general welfare of the citizens of the Issuer; and that it is in the public interest that the Commission and the Issuer take such action as they lawfully may to encourage economic development, diversification of industry and promotion of job opportunities in and near the Issuer.

SECTION II. The Common Council of the City of Bloomington approves, determines, ratifies and confirms that the issuance and sale of economic development revenue bonds in an amount of approximately \$7,500,000 of the Issuer under the Act for the acquisition, construction and equipping of the Project and the sale or leasing of the Project to the Applicant or the loan of the proceeds of the revenue bonds to the Applicant, will serve the public purposes referred to above, in accordance with the Act.

SECTION III. In order to induce the Applicant to proceed with the acquisition, construction and equipping of the Project, the Common Council of the City of Bloomington hereby approves, determines, ratifies and confirms that (i) it will take or cause to be taken such actions pursuant to the Act as may be required to implement the aforesaid financing, or as it may deem appropriate in pursuance thereof; provided that all of the foregoing shall be mutually acceptable to the Issuer and the Applicant; and (ii) it will adopt

such ordinances and resolutions and authorize the execution and delivery of such instruments and the taking of such action as may be necessary and advisable for the authorization, issuance and sale of said economic development revenue bonds; and (iii) it will use its best efforts at the request of Applicant to authorize the issuance of additional bonds for refunding and refinancing the outstanding principal amount of the Bonds, for additions to the Project, including the costs of issuance (providing that the financing of such addition or additions to the Project is found to have a public purpose (as defined in I.C. 18-6-4.5-1) at the time of authorization of such additional Bonds), and that the aforementioned purposes comply with the provisions of I.C. 18-6-4.5.

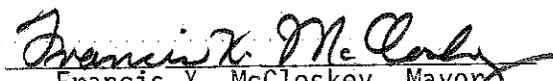
SECTION IV. All costs of the Project incurred after the adoption of this inducement resolution, including reimbursement or repayment to the Applicant of moneys expended by the Applicant for planning, engineering, interest by the Applicant for planning, engineering, interest paid during construction, underwriting expenses, attorney and bond counsel fees, acquisition, construction and equipping of the Project will be permitted to be included as part of the bond issue to finance the Project, and the Issuer will sell or lease the same to the Applicant or loan the proceeds from the sale of the bonds to the Applicant for the same purposes. Also, certain indirect expenses, including but not limited to, planning, architectural work and engineering incurred prior to this inducement resolution will be permitted to be included as part of the bond issue to finance the Project.

SECTION V. This resolution shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

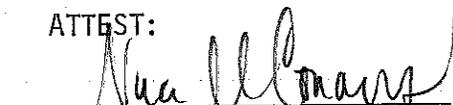
PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 21st day of August, 1980.

  
Tomilea Allison, President  
Bloomington Common Council

SIGNED and APPROVED by me upon this 21st day of August, 1980.

  
Francis X. McCloskey, Mayor  
City of Bloomington

ATTEST:

  
Nora Connors, City Clerk

SYNOPSIS

IC 18-6-4-5 authorizes the City of Bloomington to issue revenue bonds for the financing of economic development facilities. Bloomington Plaza Co., and Kroger, Co., want to construct a shopping center at the SE corner of College Mall Road and Covenant Drive, creating 160 new jobs. This resolution states that if all necessary statutory, planning, legal and financial requirements are met then the Council will pass an ordinance authorizing the issuance of bonds for the construction and development of the shopping center. A similar resolution has been passed by the Economic Development Commission. The City has no liability or responsibility for these bonds if they are approved.

George J. Stolnitz  
2636 Covenanter Court  
Bloomington, Ind. 47401

Re: Res. 80-16

August 15, 1980

AN OPEN LETTER FOR THE AUGUST 18 MEETING OF  
THE BLOOMINGTON CITY COUNCIL

The City Council  
Bloomington, Indiana 47401

Dear Members:

This letter, though written and transmitted by an individual, raises issues relating to the proposed Kroger relocation which have been discussed, and agreed to, by neighbours throughout the College Mall-Covenanter Drive area.

The strong belief here, which these neighbours and I expect to have abetted by legal representation at the August 18 meeting, is that the City and Council should be concerned, at a minimum, with each of the considerations to follow. The order of points being made is not intended to imply priorities. All, in our opinion, merit your explicit attention.

1. The Kroger move will cause enormous increases in traffic along College Mall Road and its main feeder streets converging to College Mall: Second Street, Covenanter Drive and Moore's Pike.
2. A severe traffic hazard will be established for the Montessori school and adjacent day care center by the traffic load overall, and, in significant addition, by the proposed entry to the Kroger shopping center at a point between Covenanter Drive and Moore's Pike. Traffic hazards will be greatly enhanced also along residential streets with many young children.
3. Further, the "Traffic Analysis for Bloomington Plaza", prepared for Kellams Enterprises Inc. by Smith-Quillman Associates, rests on a wholly inadequate statistical base. The base utilized, a vehicle count for part of Wednesday, July 30, during a single summer day's afternoon period, cannot remotely stand up to statistical and planning scrutiny. Yet, this is the sole factual material offered as an alleged foundation for one of the most important aspects of the entire property development proposal, affecting the development bond, physical planning and zoning verification decisions to be made by the city.
4. The Kroger relocation threatens to aggravate greatly flood flows of the Jackson Creek waters, a problem which is already severe at various times of the year.
5. The proposed Kroger relocation, with the kinds of commercial outlets likely to congregate about a supermarket, will lead rapidly to the appearance of a commercial strip zone extending south to Moore's Pike, thereby undermining the neighbourhood quality of several of the choicest residential areas in the city - among these Doctor's Park, the entire Covenanter Drive area and Bittner Woods, among others.

6. The development proposal materials so far presented simply ignore the problems of noise, unsightliness and pollution in the College Mall area parallel to the proposed relocation (especially if an array of restaurants were to be established near Kroger, as cited in the above traffic report).

7. By reducing the residential attractiveness of the above neighbourhoods, damage to property values is very highly probable or certain, a prospect important to the city as a whole in addition to the neighbourhoods most directly affected.

8. No documentation that my neighbours or I are aware of has been made available to municipal agencies to take even preliminary account of job and other losses to Eastland Shopping Center, losses to competitors in the neighbourhood, and the large related municipality costs that would become necessary to meet traffic hazards and congestion.

9. Accordingly, it is essential to observe, and respond to, the fact that no legal or adequate economic justification has been provided by the developer to Bloomington for the issue of an economic development bond.

10. More specifically, so far as we can tell until now after investigation, the Economic Development Commission has not been given the information to assess, and in any event has not attempted to assess on its own, the Kellams development proposal with respect to any of the functions legally prescribed according to Indiana laws, Section 18-6-4.5-10, 18-6-4.5-14 and 18-6-4.5-16. If the provisions of these Sections have not been met, the "inducement resolution" passed by the Commission on Monday, July 21 may well be legally premature, inappropriate, or both, and, in any event, approval by this Council would be premature, inappropriate, or both.

a. Section 18-6-4.5-10 states "It shall be the duty of the commission to investigate, study and survey the need for additional job opportunities, industrial diversification, and pollution control facilities in the municipality".

b. Section 18-6-4.5-14, referring to possible negotiations between the Commission and other parties involved in financing proposed facilities, states "A commission should consider whether a proposed facility may have an adverse competitive effect on similar facilities already constructed or operating in the municipality".

c. Section 18-6-4.5-16, perhaps the most important from the viewpoint of the Commission's responsibilities relating to the use of development bonds, states "The commission shall prepare a report briefly describing the proposed facilities, estimating the public services, if any, which would be made necessary or desirable by the proposed facilities and the expense thereof, the total project costs of the proposed facilities; and, in the case of economic development facilities, the number of jobs to be created or saved and the estimated payroll therefrom; and in the case of pollution control facilities, a description of the facilities and how they will abate, reduce or prevent pollution".

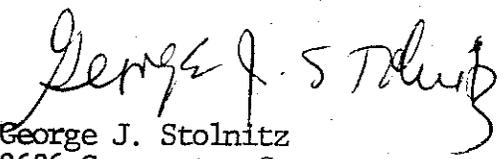
Files at the Planning Department reveal nothing of value for making such assessments, e.g., whether "jobs to be created" are gross or net, full-time or part-time, or whatever.

Based on the city's experience on Third Street after the establishment of K-Mart, there is urgent need, for development bond as well as physical planning purposes, for an independent assessment of the statement in the above cited "Traffic Analysis" (page 9) that "no traffic control devices will be necessary or desirable".

11. The project relocation proposal materials at hand contain not a single provision we are aware of for attempting to deal with the sights, sounds, smells and other unattractive features of a supermarket location, whether by buffering through trees and embankments, or by other needed means, along the western and southern sides of the proposed development.

12. Sale of alcoholic beverage in any area so close to two schools is a further negative and to-be-avoided aspect of the Kellams proposal, again from both development bond and planning viewpoints.

Sincerely yours,

  
George J. Stolnitz  
2636 Covenanter Court  
City

ICE MILLER DONADIO & RYAN

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 JAMES V. DONADIO  
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GEORGE P. RYAN  
 1908-1977

August 19, 1980

Mr. Jack Kellams  
 Kellams & Associates  
 Post Office Box 57  
 Oolitic, IN 47451

Dear Jack:

You recently inquired as to the reason that the resolution of the Bloomington Economic Development Commission referred to both the Bloomington Plaza Company, an Indiana limited partnership, and the Kroger Company as the Applicant for economic development financing. The Indiana economic development statute (I.C. 18-6-4.5-1) contemplates that where a project is to be financed by a developer to be leased by a "user" (as defined in the statute) the interests of both the developer and the user must be disclosed to both the Commission and the Common Council as if both entities were applying for economic development financing, hence both entities to that extent become the "Applicant." Although the financing agreement (Mortgage and Indenture of Trust, Loan Agreement and Promissory Note) will be between Bloomington Plaza Company and the City of Bloomington only, Indiana Code 18-6-4.5-11(h) requires that any agreements between a developer and a user must be fully disclosed to the Development Commission or the Common Council to the extent that such user can be identified at the time of the adoption of the inducement resolutions.

It should be pointed out that the Indiana economic development statute requires only that the dealings between the developer and the user be disclosed to the Commission or the governing body. Whether or not the Commission or the Common Council would refer to both the developer and the user collectively as the applicant is immaterial as long as the factual basis of that relationship is disclosed to the Commission and/or the Common Council. If you will review the minutes of the Bloomington Economic Development Commission along with the proposed excerpts of the minutes of the meeting of the Bloomington Common Council, you will see that the relationship

Mr. Jack Kellams  
August 19, 1980  
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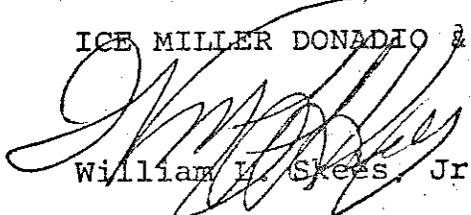
between Bloomington Plaza Company and the Kroger Company is fully disclosed pursuant to the statute.

Finally, and possibly most importantly, although Bloomington Plaza Company's development of this project will create some temporary jobs for the City of Bloomington the long term creation of employment opportunities in the City of Bloomington will be provided by the users of this project, in this case Kroger Company and any later identifiable lessees of the facility. The public purpose, which is the constitutional backbone of the Indiana economic development statute is, inter alia, the creation of employment opportunities. In this case, those employment opportunities will be created by the Kroger Company and whatever other users will eventually lease portions of the project. Hence, it has traditionally been our position that the entity who will create the long term employment opportunities along with the developer should be listed as the applicant in the resolution of the Economic Development Commission and resolution of the governing body, in this case the Common Council of the City of Bloomington.

It is our hope that the above explanation satisfies your inquiry.

Very truly yours,

ICE MILLER DONADIO & RYAN



William H. Skeels, Jr.

WLS:dks

cc: Mr. William J. Finch  
Mr. Thomas W. Dinwiddie  
Mr. Lynn H. Coyne





BUILDING AND CONSTRUCTION TRADES COUNCIL  
IN AFFILIATION WITH  
BUILDING AND CONSTRUCTION TRADES DEPARTMENT  
AMERICAN FEDERATION OF LABOR—CONGRESS OF INDUSTRIAL ORGANIZATIONS

Address of Writer 2335 Vernal Pike, Bloomington, Indiana 47401

An open letter to the Members  
of the Common Council of the  
City of Bloomington

RE: Bloomington Plaza Company/  
Economic Development Bonds

As a representative of labor in Bloomington and Monroe County,  
I would like to state my support for Bloomington Plaza Company in  
obtaining economic development bonds through the City of Bloomington  
to build a shopping center along College Mall Road. This project will  
create permanent employment for approximately 260 people as well as  
approximately 75 jobs during construction. This area needs the economic  
benefits that will come from these jobs, and the citizens of this  
community need these new employment opportunities.

I urge you, on behalf of the working men and women of Bloomington  
and Monroe County to vote in favor of issuing economic development  
bonds to make this project and these jobs possible.

Respectfully,

*James M. Hardy*  
James M. Hardy  
President- Bloomington  
Building Trades Council

S  
v  
M

*Scioto Valley Mortgage*

3650 Parkway Lane • Hilliard, Ohio 43026 • Telephone 614-876-2566 • 876-2870

August 19, 1980

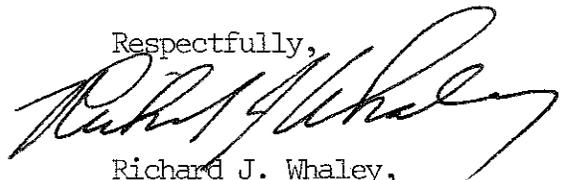
SMITH QUILLMAN ASSOCIATES  
Stephen L. Smith  
1319 North Walnut Street  
Bloomington, Indiana

Dear Mr. Smith:

Thank you for your letter of August 11th regarding the Public Hearings. After considerable thought, we have decided in favor of the proposed Kroger Shopping Plaza.

In our many travels across country, we have seen a number of attractive plazas, and we are sure that the zoning commission will put the proper architectural conditions on it to insure that the development will be a credit to the community.

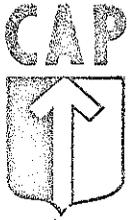
Respectfully,



Richard J. Whaley,  
Managing Partner for  
R. Dale Smith & Associates  
(Landlord for Kinder Care)

RJW/ma

*Conservative Growth*



MONROE COUNTY COMMUNITY ACTION PROGRAM, INC.  
309 West Howe Street, Bloomington, Indiana 47401/812-339-3447

August 21, 1980

Tomilea Allison, Chairperson  
Common Council  
City of Bloomington  
Bloomington, Indiana 47401

Ms. Allison:

At its August 4, 1980, meeting the Board of Directors of Monroe County Community Action Program, Inc. (CAP) voted to appoint a committee to look into the proposed ambulance user fee.

This committee met twice, once with Mr. John Goss, Administrative Assistant to the Mayor, and Mr. Gene Perry, Vice President of Bloomington Hospital. The committee also reviewed the "agreement" between the Board of Commissioners of Monroe County, the City of Bloomington and Bloomington Hospital. Mr. Perry also provided the committee with additional information on the allocation and procedures of the hospitals charitable services, as well as the income guidelines and credit policies of the hospital.

As members of the CAP Board Committee, we ideally would like to see no "user fees" charged for ambulance service. We feel that ambulance services should be one of the services like public protection, fire protection, roads, etc., that are used by all and basic to the "quality of life" of our community. However, we understand the fiscal restraints of City and County governments and recognize that City and County governments are under pressure to use their limited funding base to the fullest. We are sensitive to this responsibility, therefore, if a user fee must be implemented for the continuation of a most valuable service, we hope the program deals fairly and compassionately with those who cannot pay.

We recommend that a comprehensive educational program be developed so that low income people, particularly the elderly, would not hesitate to call an ambulance when one is needed because of a fee structure. The public, in general, should be informed as to the appropriate use of an ambulance.

We expect, as per the agreement, that all business procedures to be used by the hospital in the collection of ambulance charges be reviewed. Monroe County

Page 2  
Tomilea Allison  
August 21, 1980

Community Action Program, Inc. will naturally be interested in the treatment as it concerns low income people.

M.C.C.A.P. Ad Hoc Committee

*Jean Ferguson/eg*  
Jean Ferguson

*Tobiatha Eagleson/eg*  
Tobiatha Eagleson

*Dan Sherman/eg*  
Dan Sherman

xc: F. McCloskey  
W. Hanna  
G. Perry  
W. Finch  
c. file(1)