

# MEMORANDUM

## Office of the City Attorney

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TO: Mayor and City Council

FROM:  Ken Gaines, City Attorney; Dave L. Tedder, Esquire

DATE: July 8, 2013

RE: Bull Street Development Agreement - Financial Exposure

While we recognize that it is City Council's decision to approve or disapprove the Bull Street Development Agreement, we have an ethical duty to advise that the Bull Street Development Agreement, as currently drafted, exposes the City of Columbia to significant legal and financial risks which could be detrimental to the City of Columbia.

While there have been some modifications proposed on Friday that reduce the objections of the home builders and real estate sectors, provide for the inclusion of local, small, minority and female owned businesses, and proposed modifications to address a couple of other issues, fundamentally the question remains: does the City have a definitive approach or plan to provide the significant levels of funding required under the Development Agreement?

Most Development Agreements require the Developer to fund infrastructure, exact dedications of lands, pay fees to offset impacts, or perform in some way not ordinarily available to a local government under its zoning and development ordinances, and the developer is seeking to avoid changes in zoning over a long enough period for the project to become fully vested under normal vesting processes. In this case, it is the City promising to provide the infrastructure funding with the developer obtaining vested rights.

While the City may be able to use revenue sources available at present through water and sewer, TIF, and other revenue to fund 5.25 million in the next year, 7.96 million the next, and 2.1 million in the third, that is not main source of our concern for the City. There are relatively low trigger levels that could require the City to fund the additional 15.84 million immediately after the third year, for a total of 17.94 million in outlays 36 months from now, after already providing 13.21 million in the first two years. Adding to this concern is the parking garage that will need to be funded, also likely during this first 36 month period, since its trigger is also relatively low, at 120,000 s.f. of non-residential property, equivalent to a single Wal-Mart or Lowe's shopping area. The second garage is triggered when there are commitments to build 75 million in private investments, the same value that triggers the other 15 million just mentioned. The cost of these two garages has been estimated to be at least 16 million, and more likely 24 to 32 million. With 120,000 s.f. of build and 75 million in investment committed, the City will be liable for funding more than 50 million dollars in as little as three years. We have not yet seen a plan that can provide these funds for the infrastructure the City is contracting to provide.

For this reason, we do not recommend that the Bull Street Development Agreement be approved or made effective as currently drafted until the Council has identified one or more definitive funding sources with readily available funds to meet the City's obligations under the agreement, and is satisfied the potential liability for damages to the developer is an acceptable risk.

KEG/sla

cc: Teresa Wilson, City Manager  
Jeff Palen, Chief Financial Officer  
Michael J. Seezen, Esquire

Missy Gentry, Assistant City Manager  
Krista Hampton, Development Services Director  
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