

**WRITTEN REMONSTRANCE OF (i) BRENWICK ASSOCIATES, LLC; (ii) FIRST INDUSTRIAL ACQUISITIONS, INC.; AND (iii) TOWN OF WHITESTOWN, INDIANA TO THE ESTABLISHMENT OF I-65 WEST ECONOMIC DEVELOPMENT AREA**

September 28, 2006

**Via Hand Delivery**

Boone County Redevelopment Commission  
116 West Washington Street  
Lebanon, Indiana 46052

Dear Members of the Boone County Redevelopment Commission:

Pursuant to IC 36-7-14-17, Brenwick Associates, LLC ("Brenwick"), First Industrial Acquisitions, Inc. ("First Industrial") and Town of Whitestown, Indiana (the "Town"), collectively and individually, hereby remonstrate and object to the establishment by the Boone County Redevelopment Commission (the "Commission") of the I-65 West Economic Development Area (the "Proposed TIF Area") as more particularly described in the Declaratory Resolution establishing the Proposed TIF Area (the "Declaratory Resolution") adopted by the Commission on August 4, 2006. In support of this remonstrance, Brenwick, First Industrial and the Town (collectively, the "Remonstrators") hereby state as follows:

1. The Remonstrators are interested in or affected by the proceedings of the Commission pertaining to the establishment of the Proposed TIF Area and the projects proposed by the Declaratory Resolution:

*Brenwick*

- Brenwick owns real property in the Proposed TIF Area (the "Brenwick Property").

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- Brenwick has entered into a contract with First Industrial for the sale of the Brenwick Property to First Industrial for purposes of establishing an economic development project (the "First Industrial Project"). First Industrial has provided the Town with estimates that the First Industrial Project will create more than 800 jobs, with approximately (i) \$130,800,000 of capital investment, (ii) \$21,400,000 in annual payroll, (iii) \$145,000 of annual payroll taxes, and (iv) \$2,800,000 of annual property taxes.
- First Industrial will seek full property tax abatement and/or tax increment financing from the Town for the First Industrial Project which is located in the Annexed Area (as hereinafter defined). The receipt of such incentives is essential to the success of the First Industrial Project.
- The Conditions to Development (as hereinafter defined) resulting from the establishment of the Proposed TIF Area could prevent the First Industrial Project and, accordingly, the sale of the Brenwick Property to First Industrial, to occur if the Commission is unwilling to consent to the economic development incentives proposed by the Town.

*First Industrial*

- First Industrial has entered into a contract to purchase the Brenwick Property for purposes of developing the First Industrial Project. Conceptual development plans for the First Industrial Project are attached hereto as Exhibit 1.
- First Industrial has been in contact with the Town for over six months to discuss the First Industrial Project. First Industrial has discussed the possibility of full property tax abatements and/or tax increment financing for the First Industrial Project with the Town. First Industrial has provided the proposal attached hereto as Exhibit 2 to the Town for the First Industrial Project.
- First Industrial has signed a memorandum of understanding with the Town consenting to the inclusion of the Brenwick Property in the Annexed Area. See Exhibit 3 attached hereto.
- The receipt of full property tax abatement and/or tax increment financing for the First Industrial Project is essential for its success.
- The Conditions to Development resulting from the establishment of the Proposed TIF Area could prevent First Industrial from receiving full property tax abatement and/or tax increment financing for the First Industrial Project, thereby adversely affecting its viability.

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*The Town*

- The Town introduced Ordinance No. 2006-20 on July 24, 2006 proposing to annex approximately 1,425 acres of land located in the Proposed TIF Area, which Ordinance No. 2006-20 was amended on September 25, 2006 by the Town to annex approximately 3,918 acres of land located in and around the Proposed TIF Area (the "Annexed Area"). Ordinance No. 2006-20 as first introduced and amended is attached hereto as Exhibit 4. The establishment of the Proposed TIF Area by the Commission will adversely affect the ability of the Town to develop the Annexed Area located therein because once the Proposed TIF Area is established (i) the Commission will, pursuant to IC 6-1.1-12.1-2, have the authority over the approval of property tax abatements in the Proposed TIF Area, including the Annexed Area located therein, and (ii) any bonds issued by the Town payable from tax increment in the Annexed Area located in the Proposed TIF Area will, pursuant to IC 36-7-14-3.5, be subject to the prior payment of any bonds issued by the Commission payable from tax increment in the Proposed TIF Area (collectively, the "Conditions to Development"). The ability to provide property tax abatement and tax increment financing are essential to the ability of the Town to properly develop the Annexed Area. As stated above, the creation of the Proposed TIF Area will impair the Town's ability to effectively use such economic development tools as a result of the Conditions to Development.
- The Town provides water and sewer utility services to the Proposed TIF Area, owns and operates utility plant, equipment and land in the Proposed TIF Area and has an option to purchase additional property in the Proposed TIF Area for the construction of a new sewage treatment plant. To the extent the development of the Proposed TIF Area would have an impact on utility services provided in the Proposed TIF Area, the Town is interested in assuring that economic development in the Proposed TIF Area occurs in a manner which takes into account the Town's capacity to provide such services to the Proposed TIF Area.
- The Town has received proposals from developers to develop property within the Proposed TIF Area that would be included in the Annexed Area. Specifically, the Town has received a proposal from First Industrial attached hereto as Exhibit 2, which proposal contemplates full property tax abatement from the Town. As stated above, the ability of the Town to provide tax abatement for such development would require the additional approval of the Commission if the Proposed TIF Area is established as a result of the Conditions to Development.
- The Town has entered into Memorandums of Understanding with developers with respect to the annexation of the Annexed Area. See Exhibit 3. Such agreements have been entered into in anticipation of the Town's annexation of the Annexed Area with the corresponding ability of the Town, upon such annexation, to have

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authority over decisions with respect to property tax abatements and tax increment financings. As stated above, the Town's ability to utilize such economic development incentives is impaired through the establishment of the Proposed TIF Area which will result in the Conditions to Development.

- The Declaratory Resolution provides that the Allocation Area (as defined in the Declaratory Resolution) shall expire no later than 30 years from the date of the Declaratory Resolution. Consequently, for a period of 30 years the Town will not have the ability to (i) grant property tax abatements in the Annexed Area without prior Commission approval or (ii) provide tax increment financing for the Annexed Area located within the Proposed TIF Area without having to take into account whether the Commission has issued bonds payable from tax increment in the Area. Property tax abatements and tax increment are key economic tools municipalities are granted to promote economic development within their boundaries and the establishment of the Proposed TIF Area impairs the ability of the Town the unfettered use of such tools for the Annexed Area located in the Proposed TIF Area.
- Counsel for the Town attended the public hearing of the Commission held on September 7, 2006 relating to the Declaratory Resolution.

2. The creation of the Proposed TIF Area is not necessary, does not meet the statutory requirements necessary for the establishment of the Proposed TIF Area and the projects proposed thereby are not of public utility and benefit.

- Pursuant to IC 36-7-14-41, the Commission must make specific findings that (1) the plan for the Proposed TIF Area: (a) promotes significant opportunities for the gainful employment of its citizens; (b) attracts a major new business enterprise to the unit; (c) retains or expands a significant business enterprise existing in the boundaries of the unit; or (d) meets other purposes of section 41, 2.5 and 43 of IC 36-7-14 (the "Act"). The Declaratory Resolution does not include specific factual evidence to support any one of these findings. The Town, pursuant to an open records request attached hereto as Exhibit 5, requested information the Commission may have relied upon in support of the findings in its Declaratory Resolution. The only response provided by the Commission was a copy of the Declaratory Resolution. The Commission did not provide any evidence of developer requests for the establishment of the Proposed TIF Area, reports of consultants of the need for the Proposed TIF Area, or other evidence that would provide factual support for the findings required above. Based on the Commission's response, no such evidence exists.
- Pursuant to IC 36-7-14-41, the Commission must find that the plan for the Proposed TIF Area cannot be achieved by regulatory processes or by the ordinary

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operation of private enterprise without resort to the powers allowed under Sections 41, 2.5 and 43 of the Act because of (a) lack of local public improvement; (b) existence of improvements or conditions that lower the value of the land below that of nearby land; (c) multiple ownership of land; or (d) other similar conditions. The Declaratory Resolution does not include specific factual evidence to support this finding. As stated above, the Commission has not provided any evidence of developer requests that would support this finding.

- Pursuant to IC 36-7-14-41, the Commission must find that the public health and welfare will be benefited by the accomplishment of the plan for the Proposed TIF Area. The Declaratory Resolution does not include specific factual evidence to support this finding. As stated above, the Commission has not provided any evidence that would support this finding.
- Pursuant to IC 36-7-14-41, the Commission must find that the accomplishment of the plan for the Proposed TIF Area will be of public utility and benefit as measured by (a) the attraction of permanent jobs; (b) an increase in the property tax base; (c) improved diversity of the economic base; or (d) other similar benefits. The Declaratory Resolution does not include specific factual evidence to support this finding. As stated above, the Commission has not provided any evidence of developer requests that would support this finding.
- Pursuant to IC 36-7-14-41, the Commission must find that the plan for the Proposed TIF Area conforms to other development and redevelopment plans for the County. The Declaratory Resolution does not include specific factual evidence to support this finding. The Commission has not provided any evidence that would support this finding.
- No evidence has been presented of any developer requesting the establishment of the Proposed TIF Area. Unlike the Commission's financing for the Duke Anson Project or the Town's financing for the Perry Industrial Park Project, there is no evidence of a developer in place to develop the Proposed TIF Area or provide credit support for any bonds that may be issued to finance improvements to the Proposed TIF Area. The Proposed TIF Area is simply not needed at this time.
- The establishment of the Proposed TIF Area will have the affect of "controlling" development in the Proposed TIF Area by restricting the ability of the Town to utilize the tools of tax abatement and tax increment financing in the Annexed Area located in the Proposed TIF Area. These Conditions to Development are not a lawful purpose under the Act and are not contemplated nor authorized by the Act.
- The projects referred to in the Declaratory Resolution are vague and uncertain. No evidence is provided to allow Remonstrators to determine what specific projects will be funded from the proposed \$800,000 costs. Nor has any evidence been provided to demonstrate how the proposed \$800,000 costs were arrived at.

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The Proposed TIF Area covers nearly 4,000 acres yet no evidence is provided as to what the specific improvements will be, how much they will cost, how the boundaries of the Proposed TIF Area were determined and why the Proposed TIF Area is necessary at this time, particularly in light of the proposed annexation by the Town of the Annexed Area.

Affidavits of representatives of each of the Remonstrators are attached hereto as Exhibits 6 through 9, all in support of this remonstrance and objection to the creation of the Proposed TIF Area.

You are hereby notified of the Remonstrators' remonstrance and objection to the creation of the Proposed TIF Area. The Remonstrators' hereby request the Commission to cease its proceedings with respect to the establishment of the Proposed TIF Area until such time as the concerns of the Remonstrators can be addressed to their satisfaction.

The Remonstrators reserve all rights to pursue their remedies under the Act, including the filing of an appeal of any action of the Commission confirming the Declaratory Resolution.

If you wish to speak with the Remonstrators concerning this matter, please contact either Mr. Dennis Otten at 317-684-5307 or me at 317-684-5142.

Sincerely,



J. Christopher Janak on behalf of, and as  
Counsel for, the Remonstrators

Attachments

Cc: Whitestown Town Council  
Mr. Dennis Otten  
Ms. Eileen Sims

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OF (i) BRENWICK ASSOCIATES, LLC; (ii) FIRST INDUSTRIAL  
ACQUISITIONS, INC.; AND (iii) TOWN OF WHITESTOWN,  
INDIANA TO THE ESTABLISHMENT OF  
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**EXHIBIT 1**

*First Industrial Project – Conceptual Development Plans*

