

ORDINANCE NO. 12-17

AN ORDINANCE RELATING TO MAKING CERTAIN FINDINGS CONCERNING AND ESTABLISHING A LOCAL DEVELOPMENT AREA FOR ECONOMIC DEVELOPMENT PURPOSES WITHIN THE COUNTY TO BE KNOWN AS THE FRIENDLY MARKET LOCAL DEVELOPMENT AREA; APPROVING A LOCAL DEVELOPMENT AREA AGREEMENT AMONG THE COUNTY AND THE FRIENDLY MARKET LLC; ESTABLISHING AN INCREMENTAL TAX SPECIAL FUND FOR PAYMENT OF REDEVELOPMENT ASSISTANCE AND PROJECT COSTS PREPARATION; DESIGNATING THE COUNTY AS THE AGENCY RESPONSIBLE FOR OVERSIGHT, ADMINISTRATION, AND IMPLEMENTATION OF THE LOCAL DEVELOPMENT AREA; AND AUTHORIZING THE COUNTY JUDGE/EXECUTIVE AND OTHER OFFICIALS TO TAKE SUCH OTHER APPROPRIATE ACTIONS AS ARE NECESSARY OR REQUIRED IN CONNECTION WITH THE ESTABLISHMENT OF THE LOCAL DEVELOPMENT AREA.

WHEREAS, the County Boone, Kentucky (the "County") by pursuant to KRS 65.7041 to 65.7083, as may be amended (the "Act"), is authorized to, among other things, (1) establish a local development area to encourage investment in and development of areas of the County, (2) enter into agreements in connection with the establishment and development of a local development area, (3) establish a special fund for deposit of incremental revenues resulting from the development of a local development area, and (4) designate an agency to oversee, administer and implement projects within a local development area; and

WHEREAS, the County desires to establish a "local development area" as defined in the Act to encourage investment and development within such local development area and to pledge a portion of the "incremental revenues" as defined in the Act generated from the development of such local development area to the payment of redevelopment assistance and project costs and/or financing costs within such local development area; and

WHEREAS, the County has identified a contiguous tract of land of undeveloped land consisting of not more than 1,000 acres within the County, specifically described in Exhibit A hereto; and

WHEREAS, the County has determined to establish the Local Development Area as a local development area pursuant to the Act to encourage investment and development within the Local Development Area; and

WHEREAS, the County has agreed to support and encourage development within the Local Development Area by pledging certain Incremental Revenues (hereinafter defined) to the payment of Increment Bonds (hereinafter defined), if issued upon agreement of the County and Developer, or to otherwise pay for Redevelopment

Assistance and Project Costs (hereinafter defined) if bonds are not issued, under a Local Development Area Agreement (hereinafter defined); and

WHEREAS, the County pursuant to the Act held a public hearing on August 21, 2012 after giving proper notice concerning the County's intention to establish the Local Development Area; and

WHEREAS, the establishment of the Local Development Area is for a public purpose and that the establishment and creation of the Local Development Area within the County is for the benefit and welfare of the County's citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF BOONE, COMMONWEALTH OF KENTUCKY:

SECTION 1. Definitions.

1.1 The capitalized terms set forth below when used herein shall have the following meanings.

"Act" means Kentucky Revised Statutes, Sections 65.7041 to 65.7083.

"Agency" means the County of Boone, Kentucky.

"Local Development Area" means a contiguous geographic area of undeveloped land, located within the geographical boundaries of the County, which is created for economic development purposes by this Ordinance to support the Project proposed to be located and consisting of less 1,000 acres, as more specifically described in Exhibit A attached hereto, to be known as the "Friendly Market Local Development Area".

"Establishment Date" means the date that the Local Development Area is established pursuant to the Act and this Ordinance.

"Financing Costs" shall mean principal, interest, costs of issuance, debt service reserve requirements, underwriting discount, costs of credit enhancement or liquidity instruments, and other costs directly related to the issuance of bonds or debt for Redevelopment Assistance and Project Costs.

"Increment Bonds" means bonds or notes issued pursuant to the Act to pay for Redevelopment Assistance, Project costs, and Financing Costs, the payment of which Increment Bonds shall be supported solely by Incremental Revenues pledged by the County and Special Districts.

"Incremental Revenues" means the amount of revenues received by the County and Special Districts (if applicable) with respect to the Local Development Area by subtracting Old Revenues (as defined in the Act) from New Revenues (as defined in the Act) in a calendar year.

“Local Development Area Agreement” shall mean the Local Development Area Agreement among the County, the Special Districts, the Agency and the Developer, attached as Exhibit “B” hereto.

“Project” means the development of the Project Site, including the construction of the Friendly Market Project” within the Project Site, and other development within the Local Development Area being undertaken by the Friendly Market, LLC (the “Developer”).

“Project Costs means any investment (as defined by the Act) made by the Developer, together with financing costs thereon to construct the Project.

“Pledged Revenues” means that portion of the Incremental Revenues which are pledged by the County and Special Districts (if applicable), pursuant to the Local Development Area Agreement, to the pay for Redevelopment Assistance, Project Costs and/or Financing Costs (as those terms are defined in the Act) for the Local Development.

“Special District” means any local special taxing districts, other than the school district and fire district, that has agreed to pledge their respective Incremental Revenues to support the development of the Local Development Area.

1.2 All capitalized terms used herein and not defined above or in the recitals to this Ordinance shall have the meaning as set forth in the Act, as of the effective date of this Ordinance.

**SECTION 2. Findings and Determinations.** In accordance with the Act, the County hereby makes the following findings and determinations with respect to the Development Area:

2.1 The Local Development Area consists of a contiguous tract of land that is less than 1,000 acres. The actual size of the Local Development Area is 4.73 acres;

2.2 The Local Development Area constitutes undeveloped land as required by KRS 65.7043;

2.3 The establishment of the Local Development Area will not cause the assessed taxable value of real property within the Local Development Area and within all “development areas” and “local development areas” established by the County (as those terms are defined in the Act) to exceed twenty percent (20%) of the total assessed taxable value of real property within the County. The assessed value of taxable real property within the Local Development Area for calendar year 2011 was \$675,000; and the total assessed value of taxable real property within the County for the calendar year 2011 exceeds \$10,000,000,000. Therefore, the assessed value of taxable real property within the local development area is significantly less than twenty percent (20%) of the assessed value of taxable real property within the County.

SECTION 3. Establishment, Name, Boundaries. All that area described herein by Exhibit A attached hereto and made a part hereof, is located within the County and is hereby established and designated as the "Friendly Market Local Development Area". At the time of the enactment of this Ordinance the Local Development Area is less than 1,000 acres, being 4.73 acres in size.

SECTION 4. Establishment Date, Commencement Date, Termination date. The Establishment Date is the effective date of this Ordinance. The Commencement Date of the Development Area is the date of execution of the Local Participation Agreement and the Termination Date shall be exactly twenty (20) years subsequent to such date; provided, that if the Local Development Area Agreement relating to the Local Development Area has a Termination Date that is later than the Termination Date established in this Ordinance, the Termination Date for the Local Development Area shall be extended to the Termination Date of the Local Development Area Agreement. However, the Termination Date for the Local Development Area shall in no event be more than forty (40) years from the Establishment Date.

SECTION 5. Local Development Area Agreement. The County Judge/Executive of the County is hereby authorized and directed to execute, acknowledge and deliver on behalf of the County a Local Development Area Agreement, a form of which is attached as Exhibit B and made a part hereof, among the County, any Special Districts, who have approved a pledge of their Incremental Revenues, and the Developer, authorizing the pledge of a portion of the Incremental Revenues of the County from the Local Development Area to the payment of Project Costs. The form of Local Development Area Agreement to be signed by the County Judge/Executive on behalf of the County, the Special Districts (if applicable), and the Developer, shall be in substantially the form attached hereto, subject to further negotiations and changes therein that are not inconsistent with this Ordinance and not substantially adverse to the County. The approval of such changes by said officers, and that such changes are not substantially adverse to the County, shall be conclusively evidenced by the execution of such Local Development Area Agreement by such officials.

SECTION 6. Job Assessment Fee. Pursuant to the provisions of KRS 65.7056, the County hereby establishes as a condition of employment within the Local Development Area, a job assessment fee of two percent (2%) of the gross wages of newly created employees as a result of the Project within the Local Development Area. The job assessment fee shall be inclusive of and not in addition to any general occupational tax imposed by the County on the gross wages of employees working within the County, and shall be withheld by employers within the Local Development Area and paid to the County in accordance with the requirements and procedures established by the County for its general occupational tax. The job assessment fee, less a four (4) percent collection fee charged by the County, shall be used to pay Project Costs as provided by the Local Development Area Agreement and the Act.

SECTION 7. Special Fund. There is hereby established a Special Fund of the County to be known as the Friendly Market Local Development Area Tax Increment Fund, into which the County covenants to deposit, and into which the County officials are hereby

authorized and directed to deposit all Pledged Revenues. The County shall maintain the Special Fund unencumbered except for the purposes set forth in Section 7 hereof. Funds deposited in the Special Fund shall be disbursed in accordance with the Act, this Ordinance, and the Local Development Area Agreement and related documents to pay for Project Costs related to the Project, within the Local Development Area.

SECTION 8. Use of Pledged Revenues. Pledged Revenues shall be deposited by the County into the Special Fund created under Section 7 hereof and shall be used solely to: (a) pay directly Project Costs, as those terms are defined in the Act and herein, as determined from time to time by the County in accordance with the Local Development Area Agreement ; (b) pay debt service and costs of issuance on Increment Bonds, including Financing Costs, which may be issued by the County, or agency created by the County to issue Increment Bonds, issued to finance Project Costs and (c) for such other purposes as may be determined by the County and that are appropriate and in compliance with the purposes set forth in this Ordinance, and the Local Development Area Agreement, as the same may be amended from time to time.

SECTION 9. Periodic Accounting / Analysis. Any entity, other than the County that receives financial assistance pursuant to the provisions of this Ordinance, whether in the form of a grant or loan or loan guarantee shall make a periodic accounting to the governing body of the County in accordance with the Act and the documents controlling such grant, loan or loan guarantee. The governing body of the County shall be required to review and analyze the progress of the development activity in the Local Development Area on a quarterly basis. Such review and analysis shall at a minimum include a review of the progress in meeting the stated goals of the Local Development Area. The County Judge/Executive and other officials of the County shall report to the governing body of the County during such reviews and shall when necessary invite developers to participate in the review process to report on the progress of their developments within the Local Development Area.

SECTION 10. Designation of Oversight Agency. Pursuant to the Act, the County hereby designates itself as the Agency for purposes of oversight, administration and review responsibility of this Local Development Area Ordinance, the Local Development Area Agreement and the Local Development Area established hereby. The Agency shall act on behalf of the County in administering the Local Development Area, entering into Local Development Area Agreements, and other related agreements, with respect to the development of the Local Development Area and the financing of Project Costs therein.

SECTION 11. Severability. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

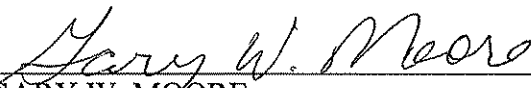
SECTION 12. Repeal of Conflicting Orders and Ordinances. All prior resolutions, municipal orders or ordinances or parts of any resolution, municipal order or ordinance in conflict herewith are hereby repealed.

SECTION 13. Effective Date. This Ordinance shall be in full force and effect from and after its passage, attestation, recordation and publication of a summary hereof pursuant to KRS Chapter 424.

That this Ordinance shall take effect and be in full force when passed, published and recorded according to law.

Introduced and given First Reading on the 7<sup>th</sup> day of August, 2012.

Adopted by the Fiscal Court of Boone County after Second Reading at a regular meeting on the 18<sup>th</sup> day of September, 2012 and signed by the County Judge/Executive as evidence of his approval, attested under seal by the County Fiscal Court Clerk and declared to be in full force and effect.

  
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GARY W. MOORE  
BOONE COUNTY JUDGE/EXECUTIVE

  
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DAPHNE KORNBLUM  
FISCAL COURT CLERK