

ORDINANCE 2022-26

AN ORDINANCE OF THE COUNTY OF BOONE, KENTUCKY (THE "COUNTY") ESTABLISHING A DEVELOPMENT AREA FOR ECONOMIC DEVELOPMENT PURPOSES WITHIN THE COUNTY OF BOONE, KENTUCKY, TO BE KNOWN AS THE UNION PROMENADE DEVELOPMENT AREA (THE "DEVELOPMENT AREA"); APPROVING A LOCAL PARTICIPATION AGREEMENT; ESTABLISHING AN INCREMENTAL TAX SPECIAL FUND FOR PAYMENT OF REDEVELOPMENT ASSISTANCE; DESIGNATING THE FINANCE DEPARTMENT OF THE COUNTY OF BOONE, KENTUCKY, AS THE AGENCY RESPONSIBLE FOR OVERSIGHT, ADMINISTRATION, AND IMPLEMENTATION OF THE 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 DEVELOPMENT AREA.

WHEREAS, the County of 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 Development Area or development areas to encourage investment and development in the County, (2) enter into agreements in connection with the establishment of a development area or local development area, (3) establish a special fund for deposit of incremental revenues resulting from the development of a Development Area or development area, and (4) designate an agency to oversee, administer and implement projects within a Development Area or development area; and

WHEREAS, the Kentucky General Assembly has determined in KRS 65.7041 that the establishment of local development areas or development areas contribute to increased employment opportunities and increased economic development in communities across the Commonwealth and serves a public purpose; and

WHEREAS, the County desires to establish a "development area" as defined in the Act, to be known as the Union Promenade Development Area (the "Development Area") to encourage investment and development within such Development Area; and

WHEREAS, the County has agreed to support and encourage development within the Development Area by pledging Incremental Revenues [hereinafter defined] to pay for Public Infrastructure Costs [hereinafter defined] to promote the development of the Development Area under an Agreement [hereinafter defined]; and

WHEREAS, the County in accordance with the Act held a public hearing on October 25, 2022, after giving proper notice concerning the County's intention to establish the Development Area; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY OF BOONE, 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 Finance Department of the County of Boone, Kentucky.

"Agreement" shall mean the Local Participation Agreement among the County, the Agency and the Developer attached as Exhibit "B" hereto.

"Development Area" means a contiguous geographic area of land being developed, 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 developed and consisting of approximately 62 acres, as more specifically described in Exhibit A attached hereto, to be known as the "Union Promenade Development Area".

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

"Incremental Revenues" means the amount of revenues received by the County with respect to the Development Area by subtracting Old Revenues from New Revenues in a calendar year, and more specifically defined in the Agreement.

"Pledged Revenues" means the Incremental Revenues which are pledged by the County, as provided in the Agreement, to the pay for Redevelopment Assistance and related to the Development Area, as set forth in the Agreement.

"Project" means the development of the Development Area for the development of the Union Promenade Project as a mixed-use office, commercial, retail, restaurant and residential uses, being undertaken by 9541 US 42 LLC, an Ohio limited liability company, or its assigns (the "Developer").

"Public Infrastructure Costs" means those costs as defined in the Agreement that are eligible to be paid for or reimbursed by Incremental Revenues.

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 Development Area consists of a contiguous tract of land that is less than three square miles in size. The actual size of the Development Area approximately 62 acres;

2.2 The establishment of the Development Area will not cause the assessed taxable value of real property within the 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 Development Area for calendar year 2021 was \$407,200 and the total assessed value of taxable real property within the County for the calendar year 2021 exceeds \$14 Billion. While the County has established other local development areas, in addition to the Development Area, the total taxable real property assessment within all such areas, including the Development Area is just a very small percentage of the County's total taxable real property assessment. Therefore, the assessed value of taxable real property within the Development Area is significantly less than twenty percent (20%) of the assessed value of taxable real property within the County;

2.3 The Development Area qualifies as "development area" under the Act to pursuant to the provisions of KRS 65.7043(2)(a)(1)(b)(iv). Normally Development Areas are for the development of previously developed land that meet certain blight factors as set forth in KRS 65.7049(3), unless the planned development of the Development Area contains a Project that may meet one of the exceptions set forth in KRS 65.7043(2)(a)(1)(b). The County has reviewed the Project and finds that the Development Area qualifies as a "development area" under the Act pursuant to the provisions of KRS 65.7043(2)(a)(1)(b)(iv), as follows:

- (a) The Project being a mixed-use office, commercial and residential project meets the definition of a "Mixed-Use Project" as set for in KRS 154.30-060, and will include a combination of residential, office, retail and restaurant uses;
- (b) The Development Area is located within an area that is under a federal storm water and sanitary sewer consent decree, pursuant to the provisions of the case of The Commonwealth of Kentucky, et al. vs. Sanitation District No. 1 of Northern Kentucky, Amended Consent Decree Case No. 2:05-CV-199-(WOB) (the "Consent Decree");
- (c) The construction of the Project will involve significant storm sewer and sanitary improvement to comply with the requirements of the Consent Decree. An existing Sanitation District No. 1 ("SD1") sanitary sewer will be relocated as part of the Project. In addition, new public sanitary sewer will be constructed and includes 12 inch diameter, 8 inch diameter, and 6 inch diameter gravity mains. The public portions of sanitary sewers will be constructed per SD1 and Kentucky Division of Water ("KDOW") regulations and will be within proposed public street rights-of ways or easements to be granted to SD1. Sanitary sewer flows will be part of the SD1 sewer system along the Fowler Fork of the Gunpowder Creek, Gunpowder Creek, and ultimately to the Western Regional Wastewater Treatment Plant, WWTP). In addition, several existing Kentucky Transportation Cabinet ("KYTC") storm sewers, from US 42, will be extended through the Project site to allow for grading and the construction of the proposed public roadways. Storm sewers will also be constructed along the proposed public streets. These proposed public storm sewers will be constructed per SD1 regulations, and in compliance with the Consent Decree and will become part of the SD1 and City's system. SD1 has authority over public storm sewers, detention, and water quality requirements for the Northern Kentucky region. As part of this Project public storm sewers and two regional detention ponds/lakes will be constructed. The storm sewers will be constructed per SD1 regulations.

These public storm sewers will be constructed in public rights-of-ways or in easements to be dedicated to SD1. The direct cost of the sanitary sewer improvements, storm sewer improvements, and storm sewer detention, not including necessary site modifications, are estimated to be \$2,955,909. When considering the land costs for the sanitary, storm sewers and storm detention to be dedicated to the public, and the design and other soft costs, the total cost of the sanitary and storm sewer improvements will exceed \$4,000,000. The sanitary and storm sewer improvements will be completed in accordance with the plans and specifications approved by SD1 and will be in furtherance of any Federal Consent Decree requirements.

2.4 The County finds the Development Area is not reasonably expected be successful financially without public assistance including, but not limited to, assistance available under the Act, and from the proceeds of Industrial Revenue Bonds issued by the City of Union, Kentucky (the "City") referenced below, which the County participated through the pledge of a portion of the County's real property taxes generated from the Project though the execution of an Agreement In Lieu of Taxes. The total site development and infrastructure costs, exclusive of land acquisition, to construct the Project exceeds \$20 Million. Project financing is not feasible without incentives, including, but not limited to, incentives under the Act to cover in-part the site development and infrastructure costs that are needed for the construction of the Project. As part of the approval the issued Industrial Revenue Bonds pursuant to KRS Chapter 103, that generated \$10,501,823.13 in net construction funds (the "IRB Incentives") to pay for public infrastructure costs for the Project, the Developer engaged the Catalytic Funding Corp. of Northern Kentucky (the "Catalytic Fund") to study the Project's finances and the need for incentives. The study prepared by the Catalytic Fund, a summary of which is attached as Exhibit D to the Development Plan, showed that without incentives the Project had a funding gap of \$19.9 Million. While the incentives won't cover all of that funding gap, combined TIF and IRB Incentives to the Project will allow for a rate of return to the Developer of under ten percent (10%), which makes the Project viable. The Catalytic Fund study noted that normally developers would expect to receive a much higher return for similar projects.

2.5 The County finds that the public benefits of developing the Development Area justify the public costs involved. It is estimated that providing incentives through the establishment of the Development Area combined with other incentives available has the potential of increasing new investment within the Development Area by over \$170 Million, and is estimate to create 654 new jobs with an estimated gross payroll of \$29,396,000. The resulting economic impact from the Project will more than offset the incentives recommended through the establishment of the Development Area. In addition, the new capital investment and jobs will encourage new residential and commercial development outside of the Development Area to support the job growth. While this Development Plan recommends the County commit a portion of the incremental increase in payroll occupational taxes to pay for redevelopment assistance within the Development Area, the pledge will not impact any regular occupational taxes the County will collect from the Project. The establishment of the Development Area will not impact any County tax revenues that will otherwise be generated within the Development Area. The Project will generate other taxes to the County and other taxing districts, including real property taxes, tangible property taxes, etc., which will not be impacted by any pledge of incremental revenues through the establishment by the County of the Development Area.

2.6 The County finds that the area immediately surrounding the Development Area has been subject to growth and development through investment by private enterprise, but that

the extreme cost of site development and infrastructure costs needed for the Project justifies the pledge of tax increment from the County to support the Project.

2.7 The County finds the Development Area is not reasonably expected to develop without public assistance including, but not limited to, assistance available under the Act. The total site development and infrastructure costs, exclusive of land acquisition, to construct the Project exceeds \$20 Million. Project financing is not feasible without incentives, including, but not limited to, incentives under the Act to cover in-part the site development and infrastructure costs that are needed for the construction of the Project.

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 "Union Promenade Development Area". At the time of the enactment of this Ordinance the Development Areas less than three square miles in area, being 62 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 Areas the date of execution of the Agreement and the Termination Date shall be exactly thirty (30) years subsequent to the Activation Date of the Agreement relating to the Development Area. However, the Termination Date for the Development Area shall in no event be more than forty (40) years from the Establishment Date.

SECTION 5. Adoption of Development Plan. The County hereby adopts the Development Plan attached to this Ordinance as Exhibit C. The hereby finds and determines that a public hearing was duly held on October 25, 2022, to solicit public comment on the Development Plan, following publication of notice thereof in accordance with Chapter 424 of the Kentucky Revised Statutes, as amended. It is hereby confirmed that a copy of the Development Plan was filed with offices of the County Judge/Executive, and with the County Clerk of the County prior to the notice of the public hearing being advertised.

SECTION 6. Agreement. The County Judge/Executive of the County is hereby authorized and directed to execute, acknowledge and deliver on behalf of the County a Agreement, a form of which is attached as Exhibit B and made a part hereof, among the County, the Agency and Developer, authorizing the pledge of the Incremental Revenues of the County from the Development Aerator the payment of Public Infrastructure Costs, but not to exceed the amounts as set forth in the Agreement. The form of the Agreement to be signed by the County Judge/Executive on behalf of the County and Agency 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 Agreement by such officials.

SECTION 7. Job Assessment Fee. Pursuant to the provisions of KRS 65.7056, the County hereby establishes as a condition of employment within the 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 Development Area. The job assessment fee shall be withheld by employers within the Development Area and paid to the County in accordance with the requirements and procedures established by the County. The Job Assessment Fee, shall be used to pay Public Infrastructure Cost Costs in accordance with the Agreement, and the Act.

SECTION 8. Special Fund. There is hereby established a Special Fund of the County to be known as the Union Promenade 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, the Agreement, and related documents to pay for Public Infrastructure Costs within the Development Area.

SECTION 9. 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 pay for Infrastructure and Site Development Costs in accordance with the Agreement, as the same may be amended from time to time.

SECTION 10. 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 Development Aeron an annual basis. Such review and analysis shall at a minimum include a review of the progress in meeting the stated goals of the 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 Development Area.

SECTION 11. Designation of Oversight Agency. Pursuant to the Act, the County hereby designates Finance Department of the County of Boone, Kentucky, as the Agency for purposes of oversight, administration and review responsibility of this Development Area Ordinance, the Agreement and the Development Area established hereby. The Agency shall act on behalf of the County in administering the Development Area, entering into the Agreement, and other related agreements, with respect to the development of the Development Area.

SECTION 12. 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 13. 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 14. 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.

GIVEN FIRST-READING APPROVAL AT A DULY CONVENED MEETING OF THE FISCAL COURT OF THE COUNTY OF BOONE, KENTUCKY, held on the 25th day of October, 2022.


GIVEN SECOND READING AND ADOPTED AT A DULY CONVENED MEETING OF THE FISCAL COURT OF THE COUNTY OF BOONE, KENTUCKY, held on the 15th day of November, 2022 and on the same occasion signed by the County Judge/Executive as evidence

of his approval, attested by the Clerk, published and filed as required by law, and declared to be in full force and effect from and after its adoption and approval according to law.

Approved:

By 
Gary W. Moore, Judge/Executive
Boone County Fiscal Court

ATTEST:


Shona Schulkers,
Fiscal Court Clerk