

BEFORE THE CITY COUNCIL OF NORMAN, OKLAHOMA

RE: RESOLUTION R-2223-28 REGARDING
PROPOSED ORDINANCE O-2223-13

OBJECTIONS TO CREATION OF DOWNTOWN NORMAN BUSINESS IMPROVEMENT
DISTRICT PURSUANT TO 11 O.S. § 39-108(A) AND ASSESSMENT ROLL PURSUANT TO
11 O.S. § 39-111(A)

The undersigned, being the owners of record of parcels within the proposed Downtown Norman Business Improvement District (“**BID**”), do hereby object to the creation of the BID and the assessment roll in connection therewith (“**Assessment Roll**”) and submit the following objections regarding the same, pursuant to 11 O.S. § 39-108(A) and 11 O.S. § 39-111(A), respectively, to the City Council in and for the City of Norman, Oklahoma (“**City Council**”), for its review and consideration:

Objections Applicable to All Below Subcategories

- The creation of the BID and Assessment Roll are improper as the benefit conveyed to each owner of the Property subject to the BID (“**Property**”) is not equal to the amount of the assessment
- Title 11 O.S. § 39-101, *et seq.*, providing for the creation of the BID and Assessment Roll is unconstitutional as it is an impermissible special law in violation of Okla. Const. Art. V, § 46
- Title 11 O.S. § 39-101, *et seq.*, providing for the creation of the BID and Assessment Roll is unconstitutional as fails to provide adequate due process to the Property owners
- The City Council’s failure to provide Property owners with adequate information, despite numerous requests, including, but not limited to, an outstanding open records request, so that Property owners can make an informed decision as to whether to support or oppose the creation of the BID and the Assessment Roll is in violation of the Property owners’ due process rights
- The City Clerk in an for the City of Norman, Oklahoma, has failed to publish the statutorily required notice set forth in 11 O.S. § 39-107(C) in violation of the Property owners’ due process rights
- In violation of the Equal Protection Clause, Section 5.1(d) of the District Plan for Downtown Norman Business Improvement District in the City of Norman, Oklahoma (“**Plan**”) treats Property owners differently by levying different assessment amounts based on the location of their properties within the BID without providing a reasonable basis for so doing

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- Article II of the Bylaws of Downtown Norman Improvement District Association fails to provide for how the Board of Directors is elected, much less how the initial Board of Directors was selected, which can lead to abuse and perpetual control of the BID by Directors who are not representative of the owners within the BID

11 O.S. § 39-108(A) Objections

Propriety and Advisability of Constructing the Improvements

- The improvements and services set forth in the Plan fail to confer any material, special benefit to the Property as required pursuant to 11 O.S. § 39-101, *et seq.*, in order to levy any such assessments
- The assessment is improper as the benefit, if any, conveyed to each Property owner is not equal to the amount of the assessment
- The boundaries and area of the BID, as set forth in Section 1.1 of the Plan, are arbitrary and not narrowly tailored to the Property owners that might benefit from enactment of the BID
- The division of the BID into separate areas, as set forth in Section 1.1 of the Plan, is arbitrary. No justification has been provided to the Property owners
- The Maintenance Program set forth in Section 3.1 of the Plan fails to provide services materially different from the services already provided by the City to the Property owners and, therefore, does not justify such assessments
- The Marketing Program set forth in Section 3.2 of the Plan and the Management Program set forth in Section 3.3 of the Plan are not authorized under 11 O.S. § 39-103.1(A) as they do not function to preserve, enhance or extend the value or usefulness of the BID Improvements set forth in Section 4.0 of the Plan

Estimated Cost of the Improvements

- Section 6.1 of the Plan, which sets forth the First Year Budget for the BID, does not itemize the specific improvements and services to be provided to the Property owners and, therefore, fails to provide Property owners adequate notice of how assessment funds are to be spent and what special benefits are to be conferred prior to the proposed passage of the Plan
- No notice has been provided to Property owners with respect to the total cost of the improvements over the term of the BID as Board of Directors in its sole discretion determines subsequent budgets and, in connection therewith, may increase the assessment levied

- Section 6 of the Plan fails to provide a permanent, irrevocable cap on the maximum percentage amount by which the Board of Directors can raise the annual budget. The Board of Directors has attempted to address this issue by adoption of Policy 22-1 in connection with the BID. However, Policy 22-1 is not permanent and irrevocable. It can be revoked or amended based on the unanimous vote of the Board of Directors, which, at any time, may include only three individuals who do not have to be representative of the Property owners. Because of this uncertainty, in addition those set forth above, the Property owners are unable to assess the ultimate cost of such an assessment

Manner of Paying for the Improvement

- Subsections 5.1(e) and 5.1(g) of the Plan, exempting residential-zoned and non-for-profit owned properties from assessment, is in clear violation of 11 O.S. § 39-103. For residential-zoned and non-for-profit owned properties, excluding property of any religious organization used primarily for religious purposes, to be exempt from such assessment, the governing body must determine that those properties are not benefited from the improvements. The City Council has made no such determination. Further, the City Council cannot reasonable make such determination when many, if not all, of the improvements and services, including, without limitation, the Maintenance Program set forth in Section 3.1 of the Plan, the Security Program set forth in Section 3.3 of the Plan, and the BID Improvements set forth in Section 4.0 of the Plan, would affect all properties within the BID.
- Section 5.4 of the Plan provides the Association, whose Board of Directors can be composed of a minority or even no Property owners, with an unrestrained right to incur debt on behalf of the Association for which the Property owners might, ultimately, be liable

Amount to be Assessed

- The amount to be assessed against the properties of the objecting Property owners herein is invalid because of the foregoing objections

11 O.S. § 39-111(A) Objections

The Proceedings

- The proceedings are in violation of the Due Process Clause as set forth above

The Assessment Roll

- No explanation has been provided showing differing schedules of when the services will be performed or the different types of services for the different zones of assessment, therefore the assessment roll is incomplete.

- The assessment roll does not include the amount for each formula of the assessment so it is incomplete and provides no way to determine the accuracy of the assessments.

Each Assessment Contained on the Assessment Roll

- Each assessment on the Assessment Roll is invalid because of the foregoing objections

The Amount of the Assessment Levied Against Each Tract or Parcel of Land

- The amount of the assessment levied against each tract or parcel of land is incorrect for the reasons set out above. The amount of the assessment on the Assessment Roll is incomplete because it does not contain the total estimated cost of the improvement that shall be assessed, providing the Property owners with insufficient notice

[Signature Pages Follow]

By its execution hereof, the undersigned submits the foregoing objections for consideration by the City Council 11 O.S. § 39-108(A) and 11 O.S. § 39-111(A).

OWNER(S): Richard Sydney Dowell IV - Rev-Liv-Trust

Authorized Signature: R.S. Dowell

Title: TRUSTEE

Parcel No(s): R0024476

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OWNER(S): MIDTOWN OFFICES, LLC

Authorized Signature: RS [Signature]

Title: PRES. DOWN PROPERTIES INC, MANAGING MEMBER, MIDTOWN OFFICES LLC

Parcel No(s): R0024485

R0024486

R0024487

R0024488

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[Signature Pages Follow]

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OWNER(S): Goodman & Sons LLC

Authorized Signature: Brendley Goodman

Title: Manager

Parcel No(s): R0093456, R0023904, R0023887,

R0024433, R0023880, R0023895, R0023907,

R0023893, R0023892, R0023894, R0023905,

R0023896, R0024361, R0023906, R0023910,

R0023911

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OWNER(S): Goodman Holdings LLC

Authorized Signature: Bradley Goodman

Title: Manager

Parcel No(s): R0023912, R0093455, R0023916,
R0023897, R0023909, R0023889, R0023898,
R0023902, R0024435, R0023903

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OWNER(S): Goodman Investments LLC

Authorized Signature: Bradley Goodman

Title: Manager

Parcel No(s): R0024013, R0023923,

R0023878, R0023879

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OWNER(S): Bradley K. Goodman

Authorized Signature: Bradley K. Goodman

Title: owner

Parcel No(s): R0023886, R0023692,

R0023715

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OWNER(S): Dorella M. Remy Rev. Trust

Authorized Signature: 

Title: Trustee (Bruce K. Remy)

Parcel No(s): R0023913

