

Approved: 3-16-07

Date

MINUTES OF THE HOUSE ECONOMIC DEVELOPMENT AND TOURISM COMMITTEE

The meeting was called to order by Chairman Lana Gordon at 3:30 P.M. on March 13, 2007 in Room 519-S of the Capitol.

All members were present except:

Robert Olson- excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department

Hank Avila, Kansas Legislative Research Department

Jason Long, Revisor of Statutes

Ann Deitcher, Committee Assistant

Conferees appearing before the committee:

Secretary Joan Wagnon, Dept. of Revenue

Mike Hutfles, Schlitterbahn Vacation Village

Jeff Boerger, Kansas Speedway

Larry Baer, League of Municipalities

Kevin Fowler, Heartland Park

Bud Burke, City of Olathe

Dale Goter, City of Wichita

Erik Sartorius, City of Overland Park

Melissa Mundt, City of Gardener

Dottie Riley, Kutak Rock LLP

Gary A. Anderson, Attorney, Gilmore & Bell

Others attending:

See attached list.

The Chair reminded the Committee of the minutes for meetings of March 5, 6, 7 and 8 that had been emailed to them on Monday, March 12. She asked for their approval.

A motion was made by Representative Worley and seconded by Representative Hayzlett that these minutes be approved. The motion passed on a voice vote.

**SB 316 - Codifying STAR Bond financing separately from Tax Increment Financing.**

The Chair introduced Secretary Wagnon who addressed the Committee regarding the role the Department of Revenue plays in the administration of STAR bonds. She was questioning the placement of bioscience development projects in the STAR bonds portion, sections 1-22, instead of the TIF sections. (Attachment 1).

The Chair asked Bob North of the Department of Commerce, who was in the audience, what the Department's stand was on **SB 316**. He said the Department of Commerce was a proponent of the bill.

Mike Hutfles spoke to the Committee in favor of **SB 316**. (Attachment 2).

Jeff Boerger appeared as a proponent of **SB 316**. (Attachment 3). Gary Anderson appeared with Mr. Boerger.

Larry Baer testified in favor of **SB 316**. (Attachment 4).

Speaking in favor of **SB 316** was Bud Burke. (Attachment 5).

Kevin Fowler offered six amendments to **SB 316**, requesting the Committee's favorable consideration to them. (Attachment 6).

## CONTINUATION SHEET

MINUTES OF THE House Economic Development and Tourism Committee at 3:30 P.M. on March 13, 2007 in Room 519-S of the Capitol.

Dale Gater introduced in his place on the agenda, Dottie Riley, who addressed the Committee in regard to an amendment offered by the City of Wichita. (Attachment 7).

Erik Sartorius offered testimony in support of **SB 316**. (Attachment 8).

Melissa Mundt addressed the Committee in support of **SB 316**. (Attachment 9). Dottie Riley also appeared with Ms Mundt.

A letter from Carol Lehman, Mayor of the City of Gardner, was submitted. (Attachment 10).

The Chair informed the Committee that, due to the intricacies of **SB 316**, she felt a sub-committee should be formed to study the bill. She asked for volunteers.

Representative Huntington would chair the Sub-Committee with Representatives Craft, Donohoe, Morrison, Rardin, Swanson, Treaster, Winn and Worley serving as members.

Hearings and possible action on bills previously scheduled will be postponed until a later date.

Copies of a Memorandum in Support of Defendants' Motion for Dismissal of Plaintiff's Claims brought by Oppenheimer and Company, Inc. versus Red Speedway, Inc., Red Capital Development, L.L.C., and Red Development, L.L.C. (Attachment 11).

The meeting was adjourned at 5:40 p.m. The next meeting of the full Committee is scheduled for Monday, March 19, 2007.

**HOUSE ECONOMIC DEVELOPMENT & TOURISM  
COMMITTEE GUEST LIST**

DATE: 3-13-07

Mike Huffles	Schitterbahn
Bud Buske	City of Olathe
DIANE Costello	Olathe Chamber
Donny Burgess	B+A
Christy Caldwell	Topeka Chamber of Com.
Susan Sherman	City of Olathe
Jessica Shaddox	City of Olathe
Ted Wagner	Schlitterbahn
DICK CARTER	City of Manhattan
Bill Sneed	Ks Speedway
JOHN C. BOTTENBERG	Ks Speedway
JEFF BERBERK	KANSAS SPEEDWAY -
BRANDON BOHNING	WHITNEY DAMRON (PA)
Jesse Romo	KDOT
J. Kent Fekles	O.P. Chamber of Commerce
John Pinegar	Heartland Park Raceway LLC
LARRY R BAEZ	LKM
Ron Sechen	Ken Law Firm

March 13, 2007

To: House Economic Development Committee  
From: Joan Wagnon, Department of Revenue

Re: Sub for S. Sub 316 STAR bonds

The Department of Revenue has a role to play in the administration of STAR bonds so we have always followed this legislation, even though the responsibility for deciding who gets STAR bonds lies with the Department of Commerce.

Staff from Revenue assisted the summer committee in trying to separate STAR bonds statutes from TIF statutes. We believe this separation is crucial to clearing up some of the misunderstandings or divergent interpretations that seem to develop from this legislation.

I appear today to raise a question as to why the bioscience development projects have been placed in the STAR bonds portion, sections 1-22, instead of the TIF sections.

I was also involved in helping the originators draft the bioscience legislation with respect to the Bioscience TIF districts. Because of their placement in sections that also contained STAR bonds, I can understand why there would be confusion. However, they are inappropriately placed in the STAR bonds portion.

Bioscience districts cannot now, nor should they be able to utilize sales tax revenues for the repayment of the bonds. Because TIF districts traditionally were used to upgrade blighted areas, the statutes had to be amended to make it clear that a bioscience district could be created and it didn't necessarily have to be blighted, and further, that it should be approved by the bioscience authority. The property tax increment in those areas should repay the TIF bonds.

No such mechanism need exist for STAR bonds. The kind of facilities that would locate in a bioscience district generally would not produce sales tax revenue, so it makes no sense to include them in that law.

I would respectfully suggest that you remove all references throughout the first 22 sections to "bioscience district", "bioscience project" and similar kinds of references and reinsert them in the TIF sections. This would include the bioscience definitions on p. 2; p. 3 lines 23-29, and throughout the bill.

Leaving them in will only cause the kinds of inconsistencies that have plagued the STAR bonds by being in the TIF statutes. For example, on p. 7, new Sec. 5, lines 30-31, leads you to believe a county can establish a bioscience development project in the unincorporated areas of the county. While, in fact, previous policy required concurrence of the bioscience authority. The same problems exist in other sections.

A project of this magnitude is an important undertaking. I hope this committee will be able to correct these problems.

## HUTFLES GOVERNMENT RELATIONS, INC.

MIKE HUTFLES, PRESIDENT

800 SW JACKSON ST., SUITE 808

TOPEKA, KS 66612

785-554-0628

[mike\\_hutfles@sunflower.com](mailto:mike_hutfles@sunflower.com)

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Chairman Gordon and members of the House Economic Development Committee, I appear before you today on behalf of Schlitterbahn Vacation Village. We are here to support the reauthorization of STAR Bonds for Kansas.

STAR Bonds have proven to be an extremely powerful economic development tool available to communities. The Kansas Speedway/Legends area in Wyandotte County speaks for itself. Projects have been approved in Topeka, Hutchinson and Manhattan. Our Vacation Village will be like no other tourist destination in the 4-state region.

As you consider the reauthorization of STAR Bonds, we urge you to keep the standards high. The Kansas Department of Commerce should be commended on their efforts in this regard. Schlitterbahn will attest to the hard work and due diligence required to be able to access STAR Bonds for our project; we do not see this as a bad thing – quite the contrary, tourist destination attractions should be just as committed (financially and otherwise) to coming to Kansas, as Kansas and Kansas cities are in bringing these attractions to Kansas.

The Senate has done good work on SB 316. As written, using STAR Bonds in a development project will still require a lot of work by local units of government, developers and private companies. We requested a change in the definition of “River walk canal facilities” (pg. 5, new Section (3), (cc) beginning on line 41) which the Senate Commerce Committee approved.

Schlitterbahn also expressed concern about new Section 20. I understand the intent of this section and the specific exemption for the Manhattan Discovery Center and the Schlitterbahn project appear to satisfy those concerns. However, this section may need to be modified to account for recent changes in the scope of the project. I have attached 2 articles to my testimony. The first is a press release from the Unified Government, dated September 15, 2005, outlines the original project. The second article is from the Kansas City Star dated October 17, 2006. This article talks about the enhancements we presented to the Unified Government on the project. The major change includes adding 1800 rooms (up from 450 in the original presentation). These enhancements have been approved by the Unified Government, but have not been submitted to the Kansas Department of Commerce, pending appointment of the new Secretary. Our concern is: a) will the enhancement be viewed as an extension of the December 23, 2005, date outlined

**Economic Development & Tourism**

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in new Section 20; or b) will this be considered a new date for the project in it's entirety. If it's the latter, the current language in SB 316 could be a problem.

Thank you for this opportunity to testify on SB 316. We look forward to welcoming our first visitors to our latest Schlitterbahn facility, the first located outside of Texas. The book you received with my testimony is the latest rendition of the Kansas City project. We also look forward to our continued partnership with the State of Kansas and the Unified Government. I will attempt to answer any questions you may have.



# News Release

Unified Government Public Relations  
701 N. 7<sup>th</sup> Street, Room 620  
Kansas City, Kansas 66101

Mike Taylor, Public Relations Director 913.573.5565  
Don Denney, Media Relations Specialist 913.573.5544

FOR IMMEDIATE  
RELEASE

Sept. 15, 2005

## Schlitterbahn Vacation Village to cover 300-plus acres

### **\$300 million resort complex, covered River Walk development proposed for Wyandotte County**

KANSAS CITY, KS – A \$300 million year-round family destination resort complex and covered River Walk is being proposed to be located in Kansas City, Kansas.

The 300-plus acre development, which will be known as Schlitterbahn Vacation Village, will be developed in an area just east of Kansas Speedway and Village West. The area encompasses State Avenue (south), Parallel Parkway (north), Interstate 435 (west) and 94th Street (east). The area includes the current Wyandotte County Fairgrounds and the Unified Government annex.

"We believe this development will be a tremendous fit for our community as a destination tourist attraction," said Mayor/CEO Joe Reardon. "The projections indicate that this development will provide a significant economic boost to Wyandotte County, creating thousands of jobs and millions of dollars of tax revenue to our community."

As part of the process, Mayor Reardon and the Board of Commissioners will consider a recommendation by County Administrator Dennis Hays to schedule a public hearing on the development. The Unified Government will also conduct meetings with citizens who live around the proposed site to discuss their issues, including a good traffic management plan.

Mayor Reardon added: "I look forward to working with the community to secure this destination development. I want to assure the community that eminent domain (i.e. condemnation) will not be a part of this process."

Mayor Reardon and Unified Government staff has met with officials from the State of Kansas and the Wyandotte County Fair Board. Both entities, the Mayor said, support moving the project forward.

"The Fair Board fully supports this development and looks forward to working in partnership with the Unified Government," said Gary Grable, treasurer of the board. "This is a tremendous opportunity for the community and it would ensure a quality venue for our county fair for many generations to come."

- The projected economic impact of the Schlitterbahn Vacation Village includes:
- Over \$3 million a year in property taxes
- Over 3,000 new jobs will be created with the combined estimated annual salary and benefits to total over \$90 million

- An estimated \$400 million impact will occur during construction in the Kansas City area and support 2,200 construction related jobs and \$200 million in salaries during the development and construction of the project.

The Schlitterbahn Vacation Village development is comprised of multiple entertainment venues connected by a Transportainment River System. In the Vacation Village, manmade rivers carry guests between lodging units and a large waterpark, year-round interactive marine park and a covered River Walk with shops and restaurants. The project will be the first expansion outside of Texas for the popular Schlitterbahn group of waterparks.

Widely recognized as the first family of American waterparks, Schlitterbahn currently operates two waterparks in New Braunfels and South Padre Island, Texas. Schlitterbahn's third Texas waterpark opens this winter on Galveston Island. Schlitterbahn Vacation Village could be open approximately 36 months after the agreement and financing are finalized. Design and engineering is expected to take about 12 months; construction could be completed 24 months later.

The project will include:

- a mile-long **River Walk** will feature destination shopping, dining and entertainment centered in a covered, year-round environment.
- a large **Interactive Marine Park** with salt water lagoons for snorkeling, helmet diving and touch pools.
- a variety of Lodging facilities will be available, including a 300-room hotel, Treehaus Resort with elevated pods and waterfront cabins, all integrated with the waterpark attractions.
- a **Schlitterbahn Waterpark** will be one of the world's largest tubing parks with miles of interconnected rivers and signature attractions such as the Master Blaster® uphill water coaster and Torrent River®.
- a state-of-the-art **Transportainment®** river system that transports guests around the complex on water. Transportainment rivers are designed to combine the elements of transportation, sport and entertainment, while minimizing the time park guests spend standing in lines.

The flagship park in New Braunfels, which opened in 1979, features more than 40 family attractions and 218 overnight rooms. Schlitterbahn Waterpark Resort is the most popular summertime waterpark in the United States and has been rated America's number one waterpark by the Travel Channel. It has been the top-attended seasonal waterpark in the United States since 1995, according to Amusement Business rankings.

This year, Schlitterbahn Waterpark Resort earned its eighth straight Golden Ticket award for America's Best Waterpark in the annual Amusement Today poll of amusement park fans. The park's Master Blaster uphill water coaster earned this year's Golden Ticket for Best Waterpark Ride and the park also received a Golden Ticket for Best Waterpark Landscaping.

The 26-acre Schlitterbahn Beach Waterpark on South Padre Island opened in 2001 and features more than a dozen family attractions. The park's innovative design features a dozen attractions, including the first Transportainment river system. The technology has earned the industry's highest innovation awards including: International Association of Amusement Parks & Attractions [IAAPA] Best New Waterpark Product; IAAPA Impact Award; World Waterpark Association Industry Leadership & Innovation award; THEA Outstanding Achievement Award from the Themed Entertainment Association.

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Schlitterbahn's third waterpark is now under construction on Galveston Island, south of Houston, Texas. In addition to these three waterparks, the Schlitterbahn® organization brings decades of worldwide development expertise to the project. One of Schlitterbahn's owners, Jeff Henry, is a principal in Henry, Schooley & Associates, which is consulting on a number of major destination resort projects currently under development, including Atlantis III in Nassau, Bahamas, Atlantis Dubai in the United Arab Emirates and DestiNY USA in Syracuse, New York. Sister company NBGS International, founded by Henry in New Braunfels, has been a leading supplier of attractions for many of the groundbreaking waterpark resorts in the United States for more than a decade.

For more information and downloadable, 300 dpi renderings, visit the media center at [www.schlitterbahn.com](http://www.schlitterbahn.com)

CONTACT: Jeffrey Siebert, Corporate Communications Director  
Schlitterbahn Waterparks  
381 East Austin Street  
New Braunfels, Texas 78130  
830.608.8519  
[jsiebert@schlitterbahn.com](mailto:jsiebert@schlitterbahn.com)

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NOTE: In an effort to streamline communications, we have converted to an email system for press releases. If you prefer to receive these by fax, just let us know by replying to this email.

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A NATIONAL NETWORK  
OF LEADING METROPOLITAN AREAS



## Kansas City Star, The (MO)

October 17, 2006

Section: Photo

Page: A1

### A lot more lodging for WyCo

**Schlitterbahn** waterpark proposes 1,800 hotel rooms, which would more than double county's capacity.

MARK WIEBE

Developers of the **Schlitterbahn** waterpark resort in Kansas City, Kan., plan to nearly triple the number of lodgings they've slated for the project.

And if those plans come through, Wyandotte County -- whose economy has boomed with the addition of Kansas Speedway and Village West -- would more than double its lodging capacity.

The county now has nearly 1,400 hotel rooms. On Monday, a **Schlitterbahn** official told The Star that its latest plans call for building 1,800 lodging units, up from the 650 contemplated earlier this year and well above the 450 announced last year when the Texas company unveiled what has evolved into a \$1 billion project.

"There weren't enough rooms in the market," said Jeff Henry, part owner in the family-operated business in New Braunfels, Texas. "We weren't going to be able to sleep our guests very easily, so we corrected it.

"It's a huge change."

Indeed. Bridgette Jobe, head of the county's Convention and Visitors Bureau, said the addition of more accommodations underscored just how far the county has come in its economic renaissance.

"Who would've imagined that we'd be talking about doubling our rooms?" Jobe said. "It just goes to show me that we are a major destination."

Construction could begin as early as spring. When completed, the resort will feature various accommodations, including hotel rooms, "condotel" units, cabins with kitchens and man-made "treehouses," elevated lodgings designed to look as if they rest in trees.

To be located on 300 acres east of Interstate 435 between Parallel Parkway and State Avenue, the resort also is to include a waterpark, a partially covered, 1-mile man-made riverwalk and 400,000 square feet of retail.

Area hotel consultant Jeff Marvel, of Marvel & Associates, said the 1,800-room figure may appear to represent a large addition to the hotel market, not only for Wyandotte County but also for the Kansas City area, which has roughly 26,000 rooms.

However, Marvel said, "it's not really your conventional supply-and-demand situation in an open market. When you're dealing with a destination attraction, then it's up to the developer to make sure that they know what they're doing."

Marvel helped Village West and Kansas Speedway project the demand for lodging that those

2.6  
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development would generate. So far, he said, the projections have proved to be on target.

And, he said, assuming **Schlitterbahn** performed a proper market study, the number of accommodations it has proposed could be appropriate.

"You wouldn't go out there and build 1,800 rooms with nothing else," Marvel said. "Nor would you go out and make the billion-dollar investment in demand generators and not capture that demand yourself."

Rick Hughes, president and CEO of the Kansas City Convention & Visitors Association, basically agreed with Marvel's assessment.

"If they have the confidence and there's enough market demand to fill 1,800 rooms, I think that's awesome," Hughes said.

In addition to the demand the **Schlitterbahn** resort would create, Wyandotte County's tourism industry is showing no sign of slowing.

Since 2001, the year Kansas Speedway opened, the number of hotel rooms in the county has grown from 617 to 1,360, county tourism officials said.

By comparison, Kansas City has 13,044 hotel rooms and Overland Park/Lenexa has 7,600, according to the Kansas City Convention & Visitors Association.

With 10 million to 12 million visitors coming to Village West every year, Jobe said, the Wyandotte County tourism market had grown to the point where it could stand more lodging.

"This will just give us more opportunity to go after conventions, meetings, reunions, student travel," she said.

**Schlitterbahn's** hotel announcement comes about nine months after the company said its vision had expanded to include winter rides using the waterpark as a foundation.

That, coupled with other changes, increased the project's budget from an original estimate of \$412 million to \$1.2 billion. An agreement between **Schlitterbahn** and the county's Unified Government calls for issuing up to \$225 million in sales-tax revenue bonds, which are repaid using sales tax generated at the development.

Henry said the company was in the midst of another budget revision, but hesitated to estimate how much the project had grown. It's possible, he said, that **Schlitterbahn** would seek more sales-tax bonds to help finance infrastructure expenses.

The Star's Dawn Bormann contributed to this report. To reach Mark Wiebe, call (816) 234-5995 or send e-mail to [mwiebe@kcstar.com](mailto:mwiebe@kcstar.com).

Graphic (map)

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# MEMORANDUM

**TO:** THE HONORABLE LANA GORDON, CHAIR  
HOUSE ECONOMIC DEVELOPMENT AND TOURISM COMMITTEE

**FROM:** JEFF BOERGER, PRESIDENT AND CEO  
KANSAS SPEEDWAY CORPORATION

**RE:** S.B. 316

**DATE:** MARCH 12, 2007

Madam Chair, Members of the Committee: My name is Jeff Boerger and I am President and CEO for the Kansas Speedway Corporation. As you all are aware, the Kansas Speedway is the state of the art motorcar racetrack in Wyandotte County. The Speedway is located at the intersection of I-435 and I-70, in Kansas City. The track seats nearly 82,000 spectators in its grandstand and over a given year we have over 600,000 customers utilize our facilities. We appreciate the opportunity to offer some additional amendments and testify in support of S.B. 316.

## Overview

A relatively new track, Kansas Speedway, built only 15 miles from downtown Kansas City, was a result of fast growing interest in motorsports entertainment in the Midwest. During its inaugural season, the Indy Racing League and NASCAR brought four races to the track, helping to establish Kansas Speedway as an anticipated stop on the top tier motorsports circuits.

## History

Construction for Kansas Speedway in Wyandotte County began in 1999. Due to the high level of interest in the new facility, all 32 planned luxury suites sold out, leading to the addition of 36 more suites for a total of 68 suites. Kansas Speedway was completed in 2001 with 78,000 grandstand seats for the ARCA RE/MAX Series, Indy Racing League, NASCAR Nextel Cup Series, NASCAR Busch Series, and the NASCAR Craftsman Truck Series participating in its inaugural season.

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Economic Development & Tourism

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Attachment # 3-1

### Facilities Today

With a current grandstand seating capacity of 82,000, Kansas Speedway boasts great views from every seat and easy access in and out of the state-of-the-art facility. Its 1.5-mile tri-oval track is suitable for all types of racing. The facility has fan-friendly access to 65 rows of seating, with a unique ground level concourse that allows spectators to walk down 30 rows (on grade) or up 35 rows (on structure). Kansas Speedway's innovative Sprint FanWalk gives visitors up close views of the competitors' garages on race day. Since the facility opened, a 400-acre shopping and entertainment venue ("Village West") has been constructed adjacent to the track, enhancing the Speedway's status as a tourist attraction.

### Economic Impact

According to an economic impact survey commissioned by the track in 2002, Kansas Speedway generated approximately \$150 million for the local economy in its inaugural season. Projected annual sales amount to \$440 million, translating into 3300 new jobs. It is estimated that the facility will generate \$10 million in property taxes and \$26 million in sales taxes during the next four years, with about \$3.5 million going to public education.

### Economic Comparison (since track opening in 2001)

#### Residential Permits (Wyandotte County):

<u>Year</u>	<u>Amount</u>
2001	252
2006	689
Change	437 (up 173%)

*Source: McGraw-Hill Construction, DODGE MarkeTrack*

#### Residential Land Values (Wyandotte County):

<u>Year</u>	<u>Amount</u>
2001	\$3,500 per acre
2006	\$7,000 per acre
Change	\$3,500 per acre (up 100%)

*Source: Wyandotte Development, Inc.*

#### Residential Average New Home Values (Wyandotte County):

<u>Year</u>	<u>Amount</u>
2000	\$163,843
2006	\$194,463
Change	\$30,620 (up 19%)

*Source: Market Graphics Research Group*

#### Commercial Property Values (Wyandotte County):

<u>Year</u>	<u>Amount</u>
2001	\$1.00 per sq ft / \$43,560 per acre
2006	\$2.10 per sq ft / \$91,476 per acre

Change \$1.10 per sq ft / \$47,916 per acre (up 110%)  
Source: Wyandotte Development, Inc.

State Tourism:

<u>Year</u>	<u>Ranking</u>
2001	48
2006	38
Change	10 (21% improvement)

Source: Travel Industrial Association of America

Property Taxes (Wyandotte County Tourism District <sup>(1)</sup>):

<u>Year</u>	<u>Amount</u>
2000	\$208,409
2006	\$8.8 million
Change	\$8.6 million (up more than 4,000%)

Source: Unified Government of Kansas City, KS

County School District Property Taxes <sup>(2)</sup> (Wyandotte County Tourism District <sup>(1)</sup>):

<u>Year</u>	<u>Amount</u>
2000	\$100,691
2006	\$4.5 million
Change	\$4.4 million (up more than 4,000%)

Source: Unified Government of Kansas City, KS

Notes: (1) Comprised of approximate 400-acre development parcel collectively known as Village West.

(2) Includes four school districts, a community college and a Library Board.

**Ancillary Development (“Village West”)**

When Kansas Speedway was built, state, city and county officials believed it would act as a catalyst to jump-start development and growth in the region. And that it did...

Adjacent to Kansas Speedway sits a 400-acre development parcel that is collectively known as Village West. Included in the development are national companies the likes Wyandotte County, the Kansas City metropolitan region and the state had never seen.

Phase One of the development included:

- Cabela’s (150,000-square-foot store showcasing thousands of hunting, fishing and outdoor gear products in a distinctive and wide-open style);
- Nebraska Furniture Mart (580,000-square-foot superstore of furniture, electronics, appliances and flooring);
- Applebee’s Neighborhood Grill and Bar (5,000-square-foot restaurant, part of the largest casual dining concept in the world);
- Great Wolf Lodge (four-story resort featuring a 38,000-square-foot indoor water park and 281 rooms, two restaurants, meeting space and other amenities);

- Chateau Avalon (62-suite hotel featuring themed rooms and resembling an 18<sup>th</sup> century French chateau); and
- Hampton Inn (76-room hotel featuring themed rooms and décor complementing the motif of Cabela's).

A minor-league baseball team also relocated to Village West to a brand new, state-of-the-art stadium across the street from Kansas Speedway. Wyandotte County has been the home of the Kansas City T-Bones ever since.

In addition, Ted's Montana Grill, W.J. McBride's, Sheridan's Frozen Yogurt, Jimmy Buffett's Cheeseburger in Paradise and others soon opened, and a thriving tourism industry in Wyandotte County was born.

Building on this momentum, a 750,000 square-foot shopping and entertainment destination called The Legends at Village West opened in 2005.

Finally, it has been announced that ground will break in 2007 on a 1,500-room resort and water park near Village West called Schlitterbahn.

Drawing visitors at a rate of nearly 12 million a year, Village West is the largest tourist destination in the state of Kansas and one of the largest in the Midwest.

Property taxes generated by the development totaled \$8.8 million in 2006. This is more than 4,000 percent higher than in 2000, the year before Kansas Speedway opened and when the land was substantially undeveloped.

### S.B. 316

When the Speedway created its business plan, we could have designed the track with all the seats built, lights installed, parking completely done, garages for other races and visiting teams during the off-season and other construction to address every future need the Speedway might have. The risk would be that if the demand for those needs did not match with the huge expense, the entire Speedway project might fail. Instead, the Kansas Speedway took a more prudent approach and the project was pursued more pragmatically, implementing stages over time as the demand arrived and expanding at that point in time. For example, now that demand for night racing has arrived, it is time to move forward in putting in the lights to allow that to happen. The current language in S.B. 316 would not recognize the past success and would penalize the Speedway as any future plans would have to stand on their own and not be given consideration as components of a huge (and successful) project. Thus, we would urge the following amendment to S.B. 316.

1. A simple option would be the deletion of the Section 20 and 21, and an amendment to the proposed definition of tax increment within the bill, noted in 2 (a).
2. Another alternative would be to amend the bill as follows:

- (a) On page 7, at the end of line, add the following sentence: For the purpose of expanding an Auto Race Track Facility the base year shall be the year of the original creation of the redevelopment district.
- (b) On page 20, at the end of line 29, delete the period and add the following: ,or the Major Tourism Area in Wyandotte County for purposes of expanding the Auto Race Track Facility.
- (c) On page 20, after the comma, insert the following: ,or the Major Tourism Area in Wyandotte County for purposes of expanding the Auto Race Track Facility.

Thus, we would respectfully urge the committee to amend S.B. 316 as stated above, and to recommend it favorably for passage. We are happy to stand for questions at the Committee's convenience.

Respectfully submitted,

Jeff Boerger

021888 / 041598  
WWSNE 1503295



League of Kansas Municipalities

300 SW 8th Avenue-  
Topeka, Kansas 66603-3951  
Phone: (785) 354-9565  
Fax: (785) 354-4186

Date: March 13, 2007

To: House Economic Development and Tourism Committee

From: Larry R. Baer  
Assistant General Counsel

Re: Sub. for Sub. SB 316  
Testimony in Support

Thank you for allowing me to appear before you today and present testimony in support of Sub. for Sub. SB 316 (SB 316) on behalf of the League of Kansas Municipalities and its 627 member cities.

Current law has both procedures in one set of statutes. SB 316 divides the tax increment finance procedures and STAR bond procedures into two separate acts. This is done to clarify which statutory provisions apply to each procedure.

The League has long supported legislation to permit the use of both tax increment financing and STAR bonds on a statewide basis. We believe that the continued ability of cities to finance public-private projects with either or both remains an integral part of development and growth process for cities.

The League strives to see that legislation on a subject is clear, concise and subject to application without confusion. The current TIF and STAR bond legislation has led to some confusion by cities and others trying to interpret and use it. We believe that the division of the TIF and STAR bond procedures that is proposed in SB 316 clarifies the procedures and should simplify their application. The substantive changes made by the Senate Commerce Committee have been made at the request of the Kansas Department of Commerce and several cities. Those changes either clarify the application of STAR bonds or TIF procedures or provide additional flexibility in their application, or both.

The League of Kansas Municipalities supports Sub. for Sub. SB 316 and asks that the committee pass it out favorably.

Again, thank you for allowing me to appear before you today.

TESTIMONY SB 316 - STAR BONDS / TIF

HOUSE ECONOMIC DEVELOPMENT AND TOURISM COMMITTEE

MARCH 13, 2007

MADAM CHAIR AND MEMBERS OF THE COMMITTEE

MY NAME IS BUD BURKE AND I APPEAR HERE TODAY ON  
BEHALF OF THE CITY OF OLATHE.

THE ECONOMIC DEVELOPMENT TOOLS MADE AVAILABLE BY  
THE LEGISLATURE TO LOCAL UNITS OF GOVERNMENT ARE  
CRITICAL TO THEIR ABILITY TO COMPETE FOR MAJOR PROJECTS  
THAT BRING JOBS, TAX BASE AND ECONOMIC STABILITY TO  
THEIR COMMUNITIES AND TO THE STATE OF KANSAS.

BY UTILIZING STAR BONDS AND TAX INCREMENT FINANCING  
OPTIONS, AS WELL AS OTHER INCENTIVES, LOCAL UNITS  
CREATE AN ECONOMIC BASE THAT, WHEN THE BONDS ARE  
RETIRED, WILL HELP TO HOLD DOWN LOCAL PROPERTY TAXES  
AND PROVIDE THE STATE AND LOCAL UNITS OF GOVERNMENT  
WITH REVENUES THAT WOULD OTHERWISE NOT BE AVAILABLE.

THE CITY OF OLATHE IS WORKING TO ATTRACT A MAJOR MULTI  
SPORT ATHLETIC COMPLEX AND DESTINATION RETAIL PROJECT  
TO KANSAS. OTHER COMMUNITIES ARE WORKING TO ATTRACT  
PROJECTS THAT WILL BUILD ON THE ECONOMIC BASE OF THEIR  
COMMUNITIES. EACH OF THESE PROJECTS DESERVE YOUR  
SUPPORT AND WILL BENEFIT NOT ONLY THE LOCAL  
COMMUNITIES BUT THE STATE OF KANSAS.

STAR BOND LEGISLATION SUNSETS THIS YEAR WITHOUT THE  
PASSAGE OF THIS LEGISLATION. PLEASE SUPPORT SB 316 AND  
THE AMENDMENTS THAT ARE PROPOSED TO CONTINUE THIS  
VERY EFFECTIVE ECONOMIC DEVELOPMENT TOOL.

THANK YOU FOR YOUR CONSIDERATION.

Economic Development & Tourism  
Date: 3-13-07  
Attachment # 5

LAW OFFICES OF  
**FRIEDEN & FORBES**  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

JOHN C. FRIEDEN P.A.\*  
RANDALL J. FORBES P.A.  
KEVIN M. FOWLER  
CLINTON E. PATTY  
TERRY A. ILES  
B. LANE HEMSLEY

555 SOUTH KANSAS AVENUE, SUITE 303  
P. O. Box 639  
TOPEKA, KANSAS 66601-0639

TELEPHONE: (785) 232-7266  
FAX: (785) 232-5841  
EMAIL: fowler@friedenforbes.com

\* ADMITTED IN KANSAS & MISSOURI  
ALL OTHERS ADMITTED IN KANSAS

**Before the House Committee on Economic Development and Tourism  
Regarding SUBSTITUTE for Substitute for Senate Bill No. 316**

**Testimony of Kevin M. Fowler on Behalf of Jayhawk Racing Properties, LLC  
and Heartland Park Raceway, LLC ("Heartland Park of Topeka")  
March 13, 2007**

Chairperson Gordon and members of the Committee, my name is Kevin Fowler. I am a partner in the Topeka law firm of Frieden & Forbes and I have practiced law in Kansas for nearly 25 years. I am appearing before this Committee on behalf of Heartland Park of Topeka ("Heartland Park"), which is a major motorsports complex owned by the City of Topeka, Kansas. Our clients, Jayhawk Racing Properties, LLC and its wholly-owned subsidiary, Heartland Park Raceway, LLC, are responsible for the development, management and operation of Heartland Park under a long-term development and management agreement with the City of Topeka.

As legal counsel for the developer, manager and operator of Heartland Park, I am well acquainted with the Kansas statutes that govern the availability and use of Sales Tax and Revenue ("STAR") bonds financing in connection with municipal redevelopment projects.<sup>1</sup> Last year, the Secretary of Commerce approved a \$22.5 million redevelopment

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<sup>1</sup> During the 2005 session of the Legislature, I assisted in drafting the amendments to our Sales Tax and Revenue ("STAR") Bond and Tax Increment Financing ("TIF") statutes (*i.e.*, K.S.A. 12-1770 *et seq.* and amendments thereto) which authorized the redevelopment of Heartland Park as a major motorsports complex and the issuance of STAR bonds to finance up to 50% of the redevelopment project costs. *See* 2005 Kan. Sess. Laws, ch. 132, §§ 1-14 (Senate Substitute for House Bill No. 2144) as amended by 2005 Kan. Sess. Laws, ch. 186, § 7(House Bill No. 2537) I also actively participated in each facet of the application, hearing and approval process that resulted in the establishment of Heartland Park as a redevelopment district, the adoption of a \$22.5 million redevelopment project plan for Heartland Park, and action by the Secretary of Commerce approving the redevelopment project plan and authorizing the City of Topeka to issue full faith and credit STAR bonds to finance approximately \$10.5 million of Heartland Park's redevelopment project costs.

**Economic Development & Tourism**  
Date: 3-13-07  
Attachment # 6-1

project plan for Heartland Park and authorized the City of Topeka to issue full faith and credit STAR bonds to finance approximately \$10.5 million or 47% of the costs to redevelop Heartland Park as a major motor sports complex in Shawnee County. Although Heartland Park has made significant progress in completing its redevelopment objectives, the project will not likely be completed for several more years.

Heartland Park believes that the availability of STAR bond financing is an extremely valuable tool that should remain available to Kansas municipalities after June 30, 2007 as a means of encouraging redevelopment initiatives that can be reasonably expected to yield local and regional or statewide benefits. Heartland Park accordingly supports reauthorization of our STAR bond enabling statutes. Unfortunately, we believe that the Substitute for Substitute for Senate Bill No. 316 inadvertently defines STAR Bond Project in a manner that will prohibit any Kansas municipality located within a "metropolitan statistical area" from using STAR bonds to finance any redevelopment project unless it involves a capital expenditure of at least \$50 million and gross annual sales of at least \$50 million. In addition, the bill eliminates the discretion that municipalities currently have to issue full faith and credit STAR bonds as long as taxpayers are given prior notice and the opportunity to protest.

We respectfully request that the Committee give favorable consideration to the six proposed amendments annexed to this testimony.. I will be happy to answer any questions you may have regarding this proposed legislation.

Proposed Amendments to Substitute for Substitute for Senate Bill No. 316  
Submitted by Jayhawk Racing Properties, LLC and  
Heartland Park Raceway, LLC on Behalf of Heartland Park of Topeka

Proposed Amendments of General Application

1. The Definition of STAR Bond Project.

Section 3(ff) (at page 6. lines 7-18) should be amended to provide as follows:

“(ff) “STAR bond project” means an approved project to implement a project plan for the development of the established STAR bond project district ~~with:~~

(1) ~~At~~ With at least a \$50,000,000 capital investment and \$50,000,000 in projected gross annual sales; or

(2) ~~for areas outside of metropolitan statistical areas, as defined by the federal office of management and budget, which~~ the secretary finds:

(A) ~~The project is an eligible area as defined in subsection (o) and amendments thereto; and~~

(B) ~~would be of regional or statewide importance; or~~ to involve an eligible area as defined in subsection (o), and amendments thereto, and would be of regional or statewide importance; or

(3) which involves a major tourism area as defined in subsection (v), and amendments thereto.”

2. **Financing from Incremental Sales Tax Revenue Outside the STAR bond District.**

New Section 9(a)(1) (at page 16, line 35) should be amended to include authorization to make special obligation bonds payable, both as to principal and interest, as follows:

New Subsection “(I) at the option of the city or county and with approval of the secretary, from all or a portion of the incremental revenue received by such city or county from any state, local or county sales tax or any combination thereof that may be reasonably attributable to STAR bond project activities;”

Section 9(a)(1)(I) in the current bill should also be redesignated as 9(a)(1)(J).

3. **Full Faith and Credit Backing for STAR Bonds.**

New Section 9 (at page 17, line 23) should be amended to include a new subsection (b) consisting of the language in New Section 27(b)(1), (2), (3), (4), (5) and (6) (at page 44, lines 13-43 and at page 45, lines 1-43) to authorize the issuance of “full faith and credit tax increment bonds” at the option of the city’s governing body and, if necessary, a vote of the electorate; and the current subsections (b), (c) and (d) should be redesignated as (c), (d) and (e), respectively.

Proposed Amendments Applicable to Heartland Park of Topeka

4. **Definition of “Project Costs” to Include Heartland Park**

Section 3(aa) (at pages 4-5) defining “Project Costs” should be amended to include “major motor sports complex” to expressly provide for the same consideration and treatment as “auto race track facility” under Section 3(aa)(15) and “major multi-sport athletic complex” under Section 3(aa)(16).

5. **Authority to Issue Bonds for Heartland Park After July 1, 2007**

New Section 20 (at page 25, lines 24-29) should be amended to include the City of Topeka’s redevelopment project for Heartland Park of Topeka as follows:

“New Sec. 20. No additional bonds may be issued after July 1, 2007, for any STAR bond project approved prior to July 1, 2007. The provisions of this section shall not apply to the STAR bond projects and bonds approved for the City of Manhattan Discovery Center on December 28, 2006, ~~and~~ the Schlitterbahn project in Wyandotte county on December 23, 2005, and Heartland Park of Topeka on December 6, 2005 and February 13, 2007.”

6. **Election to Make This Act Applicable to the Heartland Park Redevelopment Project.**

New Section 21(a) (at page 25, lines 30-35) *should be amended to include* the City of Topeka's redevelopment project for Heartland Park of Topeka as follows:

“New Sec. 21. (a) A city that created a redevelopment district in an eligible area that was approved for STAR bonds prior to the effective date of this act for the city of Manhattan Discovery Center on December 28, 2006, ~~and~~ the Schlitterbahn project in Wyandotte county on December 23, 2005, and Heartland Park of Topeka on December 6, 2005 and February 13, 2007, may by ordinance elect to have the provisions of this act applicable to such redevelopment district.”



CITY OF WICHITA

Dale Goter

Government Relations Manager

City Manager's Office

City Hall • 13th Floor • 455 N. Main
Wichita, Kansas 67202
T 316.268.4351 • F 316.268.4519
C 316.371.0134
TDD/TTY 1-800-766-3777 or 711
E dgoter@wichita.gov
www.wichita.gov

Sub. for Sub. SB 316

1 to, pedestrian walkways and promenades, landscaping and parking
2 facilities.
3 (dd) "Sales tax and revenue" are those revenues available to finance
4 the issuance of special obligation bonds as identified in section 9, and
5 amendments thereto.
6 (ee) "STAR bond" means a sales tax and revenue bond.
7 (ff) "STAR bond project" means an approved project to implement
8 a project plan for the development of the established STAR bond project
9 district with:
10 (1) At least a \$50,000,000 capital investment and \$50,000,000 in pro-
11 jected gross annual sales; or
12 (2) for areas outside of metropolitan statistical areas, as defined by
13 the federal office of management and budget, the secretary finds:
14 (A) The project is an eligible area as defined in subsection (o), and
15 amendments thereto; and
16 (B) would be of regional or statewide importance; or
17 (3) is a major tourism area as defined in subsection (v), and amend-
18 ments thereto.
19 (gg) "STAR bond project area" means the geographic area within the
20 STAR bond project district in which there may be one or more projects.
21 (hh) "STAR bond project district" means the specific area declared
22 to be an eligible area as determined by the secretary in which the city or
23 county may develop one or more STAR bond projects.
24 (ii) "STAR bond project district plan" means the preliminary plan
25 that identifies all of the proposed STAR bond project areas and identifies
26 in a general manner all of the buildings, facilities and improvements in
27 each that are proposed to be constructed or improved in each STAR bond
28 project area.
29 (jj) "STAR bond project plan" means the plan adopted by a city or
30 county for the development of a STAR bond project or projects in a STAR
31 bond project district.
32 (kk) "Secretary" means the secretary of commerce.
33 (ll) "Substantial change" means, as applicable, a change wherein the
34 proposed plan or plans differ substantially from the intended purpose for
35 which the STAR bond project district plan or bioscience development
36 district plan was approved.
37 (mm) "Tax increment" means that portion of the revenue derived
38 from state and local sales, use and transient guest tax imposed pursuant
39 to K.S.A. 12-187 et seq., 12-1692 et seq., 79-3601 et seq. and 79-3701 et
40 seq., and amendments thereto, collected from taxpayers doing business
41 within that portion of a STAR bond project district or bioscience devel-
42 opment district occupied by a project that is in excess of the amount of
43 base year revenue. For purposes of this subsection, the base year shall be

and any
redevelopment
district created
prior to the
effective date
of this act for
which the
secretary approves
one or more
STAR bond projects

Economic Development & Tourism

Date: 3-13-09

Attachment # 7



8500 Santa Fe Drive  
Overland Park, Kansas 66212  
• Fax: 913-895-5003  
www.opkansas.org

Testimony Before The  
House Economic Development Committee  
Regarding STAR bonds and Tax-Increment Financing  
Substitute for Substitute for Senate Bill 316  
Submitted by Erik Sartorius

March 13, 2007

The City of Overland Park appreciates the opportunity to appear before the committee and present testimony supporting reauthorization of STAR bonds and the effort to separate statutes governing STAR bonds and tax-increment financing (TIF).

STAR bonds are an economic tool that can help communities bring to fruition projects that could not be accomplished without the partnership of the state. Overland Park has explored potential projects involving STAR bonds, but to date has not completed any projects. Over the last several years, the legislature has closely scrutinized the concept of STAR bonds, and has refined the law to limit the use of STAR bonds. Potential projects now also are subjected to increased analysis as to their feasibility and effect on surrounding communities.

The City asks the legislature to proceed cautiously as it reviews the STAR bonds statute and considers possible changes. The statute has been altered repeatedly, and the frequent changes present a challenge to cities, developers, and state agencies as to how the law would be applied to potential projects.

Splitting the STAR bonds statute from laws governing tax-increment financing is a laudable effort. Adding clarity to both of these economic development tools should make their use easier and more straightforward.

One particular area in need of clarification in the tax-increment financing law has to do with parking facilities. We supported an amendment offered in the Senate clarifying that "parking facilities" would also include "multilevel parking structures." We ask that this committee retain that language as it applies to both STAR bonds and TIF.

As we have had time along with several other cities to review the legislation closely, we have discovered several instances where we believe technical cleanup is necessary. These suggestions are straightforward and we would ask that your legislative staff review them and incorporate them into the bill where appropriate. Additionally, we have several amendments that represent substantive changes to the bill. Both these and the above-referenced amendments are attached to this testimony.

**Economic Development & Tourism**  
Date: 3-13-07  
Attachment # 8-1

The first two amendments requested by the City of Overland Park and others would grant cities the ability to incur project costs both inside and outside a STAR bond project district or a Redevelopment District (TIF). Such a provision already exists in the Transportation Development District statutes.

As long as these costs are identified in the project plan, the City believes they should be allowed. For example, modifications to the part of a storm sewer system that is located outside the district may need to be made as a part of modifying the part of the system that is located inside the district.

Our third amendment seeks to clarify in the statute that the maximum maturity for bonds issued for TIF projects is twenty years. The statutory designation of the 20 year maximum maturity for TIF bonds has for several years been included only within KSA 12-1771b, which references the speedway project in Wyandotte County. It is desirable that such 20 year limitation be included in the provisions of the statute applicable to TIF bonds generally, both for clarification purposes, and because all of KSA 12-1771b is being proposed by others for deletion from the TIF part of the bill because it is STAR bond related.

The fourth amendment sought would create in the TIF portion of SB 316 language parallel to that found in New Section 21 of the STAR bonds part of the bill. This language would state that any city that created a redevelopment (TIF) district or bioscience development district approved prior to the effective date of this legislation could choose to complete projects in the district using the new statute.

Fifth, we and several other cities believe proposed language concerning feasibility studies for TIF projects requires adjustment. When STAR bonds and TIF were joined, additional requirements were added for STAR bond projects. Many of these seek information regarding a projects statewide effect. As TIF projects do not utilize state aid and do not have statewide impacts, we propose deletion of those feasibility study components focused toward STAR bond projects.

Our last amendment seeks to include language in New Section 9. This language would expressly permit the use of property tax increments for payment of STAR bonds. Although many communities may not choose to avail themselves of this provision, we would ask for the flexibility this language would provide.

The City of Overland Park wishes to lend its support to a few other amendments that will be presented to the committee. First, we support the language offered by Gilmore & Bell to address the definition of "tax increments." We also support language brought forward by the City of Wichita allowing for the transition of existing "redevelopment districts" under current law to status as "STAR bond project districts" under the proposed bill before you. Lastly, we are supportive of amendments offered by Heartland Park that would apply to all STAR bond projects.

We look forward to working with the committee as various amendments are considered for Sub. for Sub. for Senate Bill 316. A proper balance between oversight and flexibility for communities utilizing STAR bonds should be a goal for the legislature and cities alike.

SUB. FOR SUB. FOR SB 316

Substantive Edits Proposed by the City of Overland Park

March 13, 2007

1. Like in the Transportation Development District statutes (see, KSA 12-17,141, k.), cities and counties should have the authority to incur project costs both inside and outside of a STAR bond project district or bioscience development district as long as the project costs outside the district boundaries are identified in the project plan. For example, modifications to the part of a storm sewer system that is located outside the district may need to be made as a part of modifying the part of the system that is located inside the district. Therefore, we suggest that the following change be made:

- On Page 5 following line 37 insert the following:

(20) project costs specified in subsections (3), (4), (5), (6), (7), (8), (9), (10) and (11) may be incurred either within or outside STAR bond project district boundaries or bioscience development district boundaries so long as the project costs are identified within the STAR bond project plan or bioscience development project plan.

2. Like in the Transportation Development District statutes (see, KSA 12-17,141, k.), cities and counties should have the authority to incur project costs both inside and outside of a redevelopment district (TIF District) or bioscience development district as long as the project costs outside the district boundaries are identified in the project plan. For example, modifications to the part of a storm sewer system that is located outside the district may need to be made as a part of modifying the part of the system that is located inside the district. Therefore, we suggest that the following change be made:

- On Page 31 following line 9 insert the following:

(3) project costs specified in subsections (1)(C), (D), (E), (F), (G), (H), (I), (J) and (K) may be incurred either within or outside redevelopment district boundaries or bioscience development district boundaries so long as the project costs are identified within the redevelopment project plan or the bioscience development project plan.

3. The maximum maturity on STAR bonds (except for the speedway project in Wyandotte County) is 20 years and is set out on Page 8, line 18, on Page 14, line 39 and on Page 24, line 19. The statutory designation of the 20 year maximum maturity for TIF bonds has for several years been included only within KSA 12-1771b, which references the speedway project in Wyandotte County. It is desirable that such 20 year limitation be included in the provisions of the statute applicable to TIF bonds generally, both for clarification purposes, and because all of KSA 12-1771b is being proposed by others for deletion from the TIF part of the bill because it is STAR bond related. Therefore, we suggest that the following change be made:

- On Page 46, following line 34 insert the following:

(e) The maximum maturity on bonds issued to finance projects pursuant to this section shall not exceed 20 years.

4. The STAR bond part of the bill contains a provision in New Section 21 found at Page 25, beginning at line 30, which allows a city or county that created a STAR bond project district under existing statutes to complete the projects in the district using the new statute. We suggest that an equivalent and parallel

provision be inserted into the TIF part of the bill. Therefore, we suggest that the following change be made:

- On Page 47 following line 22 insert the following, and then re-number existing Sec 30 and Sec. 31 of the bill accordingly:

New Sec. 30. Any city that created a redevelopment district or bioscience development district in an eligible area that was approved prior to the effective date of this act may by ordinance elect to have the provisions of this act applicable to such redevelopment district or bioscience development district. The provisions of this act shall not affect the validity of any outstanding special obligation bonds or full faith and credit tax increment bonds.

5. With respect to feasibility studies, there are requirements that were originally inserted into the existing statutes as additional requirements for STAR bond feasibility studies. Those additional requirements are found in both the STAR bond and TIF parts of the bill. Therefore, we suggest that the following change be made:

- The material beginning on Page 28, line 9, and extending through Page 28, line 34 should be removed.

6. We have two suggestions concerning the revenue sources that may be used to pay off STAR bonds:

- In the STAR bond part of the bill, New Sec. 9 does not appear to expressly authorize the use of property tax increments for payment of STAR bonds. We suggest the following addition on Page 16, following line 34:

(I) From a pledge of all or a portion of the amount of real property taxes collected from real property located within the STAR bond project district or bioscience development district that is in excess of the amount of real property taxes which is collected from the assessed valuation of all real property within the boundaries of the STAR bond project district or bioscience development district on the date the STAR bond project district or bioscience development district was established.

[This language was derived from the definitions of "Tax increment" and "Base year assessed valuation" found in KSA 2006 Supp. 12-1770a.]

- New Sec. 3 in the STAR bond part of the bill contains a definition of "Tax increments," which refers to state and local sales, use and transient guest tax revenues. However, that defined term thereafter appears only on Page 11, line 18. Significantly, the term is not used in New Sec. 9 pertaining to the revenue sources that may be used to pay off STAR bonds. Instead, New Sec. 9, subsections (a)(1)(C), (D), (E) and (F) insert the word "incremental" before the word "revenue" in connection with the pledge of sales and use taxes, which does not appear in the existing statutes. The edit proposed to New Sec. 9 by Gilmore & Bell resolves this issue.

7. Finally, the City supports the edit proposed by the City of Wichita on Page 6, Line 23 of the bill regarding the transition of existing redevelopment districts created in contemplation of usage of STAR bond financing, to status as STAR bond project districts.

SUB. FOR SUB. FOR SB 316

Clean-up Edits Proposed by the City of Overland Park

March 13, 2007

1. Omissions of the word "project" from use of the defined term "STAR bond project district":

- Page 8, line 3
- Page 14, line 8
- Page 14, line 17
- Page 14, line 20
- Page 15, line 39
- Page 16, line 2
- Page 16, line 6
- Page 16, line 11
- Page 16, line 16
- Page 16, line 22
- Page 17, line 40
- Page 22, line 7
- Page 23, line 27

2. Omissions of the words "STAR bond" from use of the defined term "STAR bond project district":

- Page 9, line 10
- Page 9, line 15
- Page 19, line 20

3. Incorrect reference:

- On Page 9, line 2 substitute the words "(f)(2) of New Section 7" for "(b)." Also delete line 3 through line 9 on Page 9.

4. Incorrect reference:

- The words "subsection (b)" on Page 34, line 33 should be the words "subsection (c)."

5. Omitted introductory clause:

- In the STAR bonds part of the bill, the list of costs that are not allowed as project costs is preceded by the following introductory clause: "Except as specified in subsections (1) through (17), above,...." For clarification purposes, in the TIF part of the bill, the list of costs not allowed as project costs should be preceded by the same kind of introductory clause. Thus, we suggest that the following introductory clause be inserted on Page 30, line 32: "Except as specified in paragraph (1), above,...."



## TESTIMONY

to

**KANSAS HOUSE**

**ECONOMIC DEVELOPMENT AND TOURISM COMMITTEE**

**Melissa Mundt, Assistant City Administrator, City of Gardner, Kansas**

**Dorothea Riley, Bond Counsel  
Kutak Rock LLP**

**March 13, 2007**

**Senate Bill 316**

### **Honorable Chairperson Gordon and Committee Members:**

The City of Gardner is currently working on a major economic development project that will provide a substantial benefit to the State of Kansas. The proposed BNSF Intermodal and Logistics Park, now known as KC Logistics Hub, is an approximately 800 plus acre development that will afford a major economic engine<sup>1</sup> to the State of Kansas. The KC Logistic Hub is projected to generate billions in revenue directly to the State of Kansas and other governmental entities and in excess of 13,000 new jobs over twenty years.

An intermodal facility is a place where transportation containers are moved between railcars and trucks to adjacent warehousing that stores goods for further distribution. Currently BNSF has a small intermodal facility located in Kansas City, Kansas. This location can no longer support the operations due to the ever increasing flow of consumer goods from Asia and the Pacific Rim. Land abutting Gardner has been selected for this project due to its prime geographic location between BNSF's main line from the Port of Los Angeles to Chicago and Interstate 35. The Kansas City area is a strategic location for distribution of goods to population centers up to 350 miles away, which includes places from Des Moines, IA to Oklahoma City, OK.

The City of Gardner is here today to request a change in the TIF legislation to provide financing options for the massive amounts of public infrastructure required to support this project. In addition to a necessary new interchange there are many miles of roadways that will need to be upgrade from gravel to roadway standards to support the projected 5,900 vehicular trips per day at the opening of the facility to 59,800 trips at build out.<sup>2</sup> In addition, there are several overpasses that will need to be constructed as well as improvements and extensions of utility services. Currently, the KC Logistics Hub property is in unincorporated Johnson County and, therefore, does not have City level services. The City of Gardner provides water, wastewater, and electric services within it its City limits and anticipates extension of services to the logistics hub. Cost for the roadway infrastructure and interchange alone is estimated between \$60-100

<sup>1</sup> Per CH2M Hill/Lockwood Green on behalf of BNSF and a separate study by Southwest Johnson County Economic Development Corporation. Completed in 2006.

<sup>2</sup> Per HDR Traffic Study on behalf of BNSF and assistance from the City of Gardner. Completed in 2006.

**Economic Development & Tourism**

**Date:** 3-13-07

**Attachment #** 9-1

million. The City of Gardner cannot bare that burden and needs an additional financing tool to facilitate providing the necessary infrastructure funding to make the project a success for the State of Kansas and, as importantly, not unduly harm the residents and business that currently exist in Gardner.

The City of Gardner recommends changes to K.S.A. 12-1770a in the current TIF legislation to assist Gardner is using local TIF revenue to pay for a portion of the project. Specifically, the changes to K.S.A. 12-1770a in the current TIF legislation which Gardner is requesting consist of the following:

1. Adding "intermodal transportation area" as a new category to the types of eligible TIF areas.
2. Adding a definition of "intermodal transportation area" to mean an area of not less than 800 acres to be developed primarily to handle the transfer, storage and distribution of freight through railway and trucking operations.
3. Permitting redevelopment project costs for intermodal transportation areas to include the acquisition of land for, and the construction and installation of, publicly-owned infrastructure improvements which serve an intermodal transportation area but may be located outside of the TIF district.

These changes would permit Gardner to use the incremental increase in property taxes created by the development of the KC Logistics Hub to assist in paying for a portion of the massive public infrastructure requirements that are a result of this project.



TESTIMONY to  
KANSAS HOUSE  
ECONOMIC DEVELOPMENT AND TOURISM COMMITTEE

Mayor Carol Lehman, City of Gardner, Kansas

March 13, 2007  
Senate Bill 316

Honorable Chairperson Gordon and Committee Members:

The City of Gardner is a rapidly growing community in the southwestern Kansas City Metropolitan area. We have been working diligently for the last ten years to prepare for the growth we are experiencing. We have been completing comprehensive development plans for land and utilities, multi-year financial forecasting and budgeting, while carefully managing our overall debt burden. We have been working to control taxes and fees while simultaneously expanding our streets, parks, water, wastewater and electric infrastructure. Today, Gardner has almost doubled in population since 2000 and we have nearly 17,000 citizens. Because of this, our City has many significant capital projects which we have been funding to meet the ever growing demand for services caused by the influx of new residents.

Therefore, Gardner is limited in our capacity to assist with the funding of the KC Logistics Hub. We do not have any sources of funds outside of those that will be generated by the project to use for the project. We also know that there will be further increased demands for services with this development. Our City's funding sources are already committed to providing infrastructure and services to our current planning area. The KC Logistics Hub site was not in that planning area. However, the logistics hub site is adjacent to current City boundaries and, therefore, it makes sense for the City of Gardner to have control over the planning and development of this area.

The City of Gardner did not seek out this project; yet it's on our doorstep and it will affect my community greatly. Given our current growth demands, our City does not have the financial abilities to fund this project, nor should we be required to provide the funds on our own. It is clear this project will be a significant benefit to the State of Kansas and other governmental entities. In fact, we believe it will keep the State of Kansas economically viable for years to come. The project needs expensive public improvements, and in order for the City to be able to participate with any assistance, we need a new mechanism to capture future tax dollars off the site.

The citizens of Gardner have clearly told the governing body they want this development to pay its own way and I am committed to find as many options as possible to carry out the will of our constituents. Therefore, I respectfully request that you consider adding intermodal transportation areas as an additional eligibility within the TIF statutes to provide Gardner an added economic development tool to aid in making this project a success for everyone.

Sincerely,  
Carol Lehman, Mayor, City of Gardner

**Economic Development & Tourism**  
**Date:** 3-13-07  
**Attachment #** 10



alleged oral contract and not the prior written contract. The Complaint does not adequately allege these facts.

Plaintiff's Complaint alleges three counts, specifically Count I, Breach of Contract; Count II, Quantum Meruit; and Count III, Unjust Enrichment. Defendants seek dismissal of all three Counts of Plaintiff's Complaint.

All Defendants are entitled to dismissal of Count I alleging breach of contract because Plaintiff's claim fails by way of Payment, Accord and Satisfaction and Release. Further, Defendants RED Speedway, Inc. and RED Development, L.L.C. are entitled to dismissal of Count I alleging breach of contract because, on its face, they were not parties to the contract nor did Plaintiff adequately plead that they assumed, in writing, any of its obligations.

All Defendants are entitled to dismissal of Count II alleging Quantum Meruit because of Payment, Accord and Satisfaction, and Release, and because Plaintiff has not pled, nor can it prove, that Defendants had an appreciation or knowledge of the alleged benefits conferred upon them by Plaintiffs.

All Defendants are entitled to dismissal of Count III alleging Unjust Enrichment because of Payment, Accord and Satisfaction, Release, and because Plaintiff has not pled, nor can it prove that Defendants had an appreciation or knowledge of the alleged benefits conferred upon them by Plaintiffs.

Finally, should any of the Counts survive this Motion, all Defendants are entitled to dismissal of the claim for pre-judgment interest and attorney's fees requested in

Counts I, II, and III because the claims are unliquidated and no written contract requires the award of attorneys' fees.

For these reasons and as set forth in more detail below, Defendants' Motion to Dismiss should be granted.

**Statement of Facts**

For the purpose of this motion, the relevant facts are as follows:

1. On or about April 28, 2003, Fahnestock & Co. Inc. sent R.E.D. Capital Development L.L.C. a letter purporting to set forth terms of engagement of Rick Worner of Fahnestock & Co., Inc. ("Worner") as an investment banker for R.E.D. Capital Development L.L.C. Exhibit A to Complaint.
2. On or about May 13, 2003, the terms were purportedly accepted by Dan Lowe without mention of his authority to sign said document. Exhibit A to Complaint.
3. The April 28, 2003 letter specifically limited the scope of Worner's work to representing and advising R.E.D. Capital Development, L.L.C. regarding principally its efforts to receive economic incentives for real estate acquisition and development in Wyandotte County/Kansas City, Kansas. Exhibit A to Complaint.
4. Specifically, the April 28, 2003 letter did not cover various Hard Rock projects that were being contemplated, stating that "[a] separate agreement will be executed for those projects." Exhibit A to Complaint.
5. Inconsistent with the express terms of the April 28, 2003 letter that contemplated a separate, executed Agreement, the Complaint alleges that a subsequent oral

agreement was made whereby one or more of the defendants promised to pay Plaintiff \$1,000,000. Complaint, para. 12.

6. The Complaint makes only conclusory statements regarding the formation of the alleged \$1,000,000 oral agreement without specifically identifying its terms. Complaint, para. 12.

7. The Complaint specifically states that Plaintiff did receive a \$1,000,000 payment from Red Speedway, Inc. but chose to furnish a lien waiver relating only to services rendered in connection to the subsequent alleged oral agreement. Complaint, para. 14 - 15.

**Statement of Questions Presented**

1. Whether payment made to Plaintiff providing services under a prior written contract discharges liability on said contract under the affirmative defenses of payment, release, and/or accord and satisfaction when the existence of a subsequent oral contract for which Plaintiff alleges payment was made is not properly pled?
2. Whether defendants who were not parties to a written agreement are liable to perform under the written agreement when the Complaint does not state that said defendants assumed in writing the obligation to pay under the Agreement.
3. Whether claims for quantum meruit and unjust enrichment should be dismissed when the Complaint does not plead that Defendants had an

appreciation or knowledge of the benefit allegedly conferred to them by Plaintiff?

4. Whether claims for quantum meruit and unjust enrichment should be dismissed when there exists an underlying written agreement that has been paid and therefore subject to dismissal for the affirmative defenses of payment, release, and/or accord and satisfaction?
5. Whether claims for quantum meruit and unjust enrichment are identical and thus subject to the same defenses in a motion to dismiss?
6. Whether claims for prejudgment interest should be dismissed when the claims are unliquidated.?
7. Whether claims for prejudgment interest and attorneys fees should be dismissed when no written contract requires their payment?

#### **Argument and Authorities**

The standards for a Rule 12(b)(6) motion to dismiss are well settled and summarized as follows: A Rule 12(b)(6) motion to dismiss will be granted only if it appears beyond a doubt that the plaintiff is unable to prove any set of facts entitling him to relief under his theory of recovery. *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957). "All well-pleaded facts, as distinguished from conclusory allegations, must be taken as true." *Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir. 1984). The court must view all reasonable inferences in favor of the plaintiff, and the pleadings must be liberally construed. *Id.*; Fed.R.Civ.P. 8(f). The issue in reviewing the sufficiency of a complaint is not whether the plaintiff will prevail, but whether plaintiff is entitled

to offer evidence to support his claims. See *Scheuer v. Rhodes*, 416 U.S. 232, 236. 94 S. Ct. 1683, 40 L.Ed.2d 90 (1974), overruled on other grounds by *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 73 L.Ed.2d 396 (1982).

When evaluating a motion to dismiss, the court generally limits itself "to the facts stated in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference." *Sprint Corporate Securities Litigation*, 232 F. Supp.2d 1193 (D. Kan. 2002). As such, the Court is entitled to review the April 28, 2003 letter attached to the Complaint as Exhibit A.

I. PLAINTIFF HAS NOT PLED ANY FACTS TO SUPPORT THE EXISTENCE OF A SUBSEQUENT ORAL CONTRACT; THEREFORE THE \$1,000,000 PAYMENT TO PLAINTIFF SHOULD BE ATTRIBUTED TO THE PRIOR WRITTEN CONTRACT, ENTITLING DEFENDANTS TO DISMISSAL FOR PAYMENT, ACCORD AND SATISFACTION AND/OR RELEASE.

It is not the duty of the Court to re-write the pleading for the pleader. 2 Moore's Federal Practice, § 12.34[1] [b], p. 12-61 (Matthew Bender 3d ed.). Conclusory allegations or legal conclusions masquerading as factual contentions will not withstand a motion to dismiss. While facts must be accepted as alleged, this does not automatically extend to bald assertions, subjective characterizations or legal conclusions. The pleader must allege factual predicate concrete enough to warrant further proceedings. *Id.*, at pp. 12-61 12-63. Courts accept facts, material facts and "well-pleaded" facts and allegations as true for purposes of the motion. Wright & Miller, Federal Practice and Procedure: Civil 2d, § 1357, at 311-14. They do not accept legal conclusions, unsupported conclusions, unwarranted inferences or sweeping legal

conclusions cast in the form of factual allegations. *Id.*, at 315-18. The pleader must set forth sufficient information to outline the elements of the claim or to permit inferences to be drawn that these elements exist. *Id.* at 339-40. When considering a motion to dismiss for failure to state a claim, a court must distinguish between well-pleaded facts and conclusory allegations. *Deere & Co. v. Zahm*, 837 F.Supp. 346, 353 (D. Kan. 1993), citing *Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir. 1984). Well-pleaded facts, as distinguished from conclusory allegations, must be taken as true. *Wesley v. Don Stein Buick, Inc.*, 996 F.Supp. 1312, 1314 (D. Kan. 1998). Conclusory allegations are not. *Steinert v. Winn Group, Inc.*, 83 F.Supp. 2d 1234, 1237 (D.Kan.2000). Allegations of conclusions or opinions are not sufficient when no facts are alleged by way of the statement of the claim. *Edward Kraemer & Sons v. City of Kansas City*, 874 F.Supp. 332,334 (D. Kan. 1995). A pleading which contains conclusory allegations completely lacking in factual support to sustain the respective elements of the claims should be dismissed. *Whane v. State of Kansas*, 980 F.Supp. 387, 393, 394 (D. Kan. 1997). A court may not assume that the pleader can prove facts that have not been alleged. If the facts narrated do not at least outline a viable claim, the pleading cannot pass Rule 12(b)(6) muster. *Freeman v. Burlington Northern and Santa Fe Railway Co.*, 176 F.R.D. 581, 582 (D. Kan. 1997). Failure to state a prima facie case may result in dismissal under Rule 12(b)(6). *Mills v. State of Kansas, Eighth Judicial District*, 994 F.Supp. 1356, 1358 (D. Kan. 1998)

Plaintiff's Complaint fails to comply with the minimal pleading requirements of Rule 8(a)(2) with regard to its state common law claim for breach of contract. For Plaintiff to recover for breach of the May 2003 written contract, Plaintiff must plead and

prove the existence of a subsequent oral agreement and that the \$1,000,000 payment received was for that subsequent agreement. Plaintiff did not properly plead the existence of an oral agreement. At a minimum, an oral contract must arise from facts and circumstances that establish a mutual intent to contract. *Ellis v. Berry*, 19 Kan. App.2d 105, 108, 867 P.2d 1063 (1993) (citing *Mai v. Youtsey*, 231 Kan. 419, 422, 646 P.2d 475 (1982)).

In Plaintiff's Complaint, it failed to allege facts to support its claim that an oral contract existed, the terms of that contract, or any other factual support for its conclusory statement that an oral contract existed. Paragraph 12 of the Complaint merely alleges: "Subsequent to July 1, 2003, Oppenheimer and RED Speedway, RED Capital Development, and/or RED Development entered into an oral agreement by which Oppenheimer agrees to furnish additional investment banking, advisory, tax, and real estate development services and RED Speedway, RED Capital Development, and/or RED Development agreed to pay \$1,000,000." The allegation does not contain enough detail of what types of services it agreed to perform and what each service was worth. Without the proper pleading of the subsequent oral agreement, the \$1,000,000 payment would have been made under the only other existing properly pled agreement - the prior written one which forms the basis of this lawsuit. This is true, particularly, because the alleged oral agreement would have been unenforceable under the Kansas Statute of Frauds. K.S.A. § 33-106.

Without properly pleading the terms of the subsequent oral agreement, paragraph 13's allegation that RED Speedway, Inc. paid Oppenheimer \$1,000,000 entitles

all defendants to dismissal for payment, accord and satisfaction and/or release. Payment, accord and satisfaction, and release are all related affirmative defenses Fed R. Civ. P. 8(c). Payment is a complete defense if payment is made in full. Accord and satisfaction applies "when an offer in full satisfaction of an obligation, accompanied by such acts and declarations or made under such circumstances that the party to whom the offer is made is bound to understand that if he accepts the offer, it is in full satisfaction of and discharges the original obligation." *EF Hutton & Company, Inc. v. Heim*, 236 Kan. 603, 610, 694 P.2d 445 (D.Kan. 1985). When a bill is sent for \$1,000,000, payment of that same sum satisfies the requirements for accord and satisfaction. It also releases the payor from the obligation.

II. RED SPEEDWAY, INC. AND RED DEVELOPMENT, L.L.C. ARE ENTITLED TO DISMISSAL OF COUNT I FOR BREACH OF CONTRACT BECAUSE THEY ARE NOT PARTIES TO THE SUBJECT WRITTEN AGREEMENT AND THE COMPLAINT DOES NOT STATE THAT THEY ASSUMED THE OBLIGATION TO PAY UNDER THE AGREEMENT.

This argument only applies if Defendants RED Speedway, Inc. and RED Development, L.L.C. fail to be dismissed under Argument I. On its face, Exhibit A to Plaintiff's Complaint is with RED Capital Development, L.L.C. Plaintiff does not allege that RED Speedway, Inc. or RED Development, L.L.C. assumed, in writing, the obligations under the written agreement attached as Exhibit A. Paragraph 9 is as close as Plaintiff gets to making this allegation: "Upon Oppenheimer's understanding and belief, RED Capital Development's rights and obligations under the Agreement may have been assigned to and assumed by RED Development and RED Speedway."(emphasis added). This allegation is insufficient to bind RED Development,

L.L.C. and RED Speedway, Inc. to the agreement's performance. Pleading what may have happened is not even conclusory, nor does it contain the sufficient detail required as discussed in Argument I. Allegations of conclusions or opinions are not sufficient when no facts are alleged by way of the statement of the claim. Edward Kraemer & Sons v. City of Kansas City, 874 F.Supp. 332,334 (D. Kan. 1995). Merely stating that an assignment or assumption "may" have occurred does not sufficiently plead a case for breach of contract against RED Speedway, Inc. and RED Development, L.L.C.

Further, even if the Complaint is deemed to have alleged that RED Speedway, Inc. and RED Development, L.L.C. did assume such obligations, it did not allege the existence of any writing signed by the Defendants. Thus, Count I would be barred by the Statute of Frauds and properly dismissed against these two Defendants. K.S.A. § 33-106

III. ALL DEFENDANTS ARE ENTITLED TO DISMISSAL OF COUNT II ALLEGING QUANTUM MERUIT AND COUNT III ALLEGING UNJUST ENRICHMENT FOR PAYMENT, ACCORD AND SATISFACTION AND/OR RELEASE AND BECAUSE THERE IS NO INEQUITY IN DEFENDANTS RECEIVING ALLEGED BENEFITS WHEN IT PAID \$1,000,000 FOR THOSE ALLEGED BENEFITS.

For the same reasons set forth in Argument I, all Defendants are entitled to dismissal of Count II and Count III for payment, accord and satisfaction and/or release. Simply, the \$1,000,000 payment made was for the services allegedly performed under the written agreement attached to the Complaint as Exhibit A. There can be no further recovery under quantum meruit.

Further, Defendants have not been unjustly enriched. The claims for unjust enrichment and quantum meruit are identical. Each requires the establishment of three

elements: "(1) a benefit conferred on the defendant by the plaintiff; (2) an appreciation or knowledge by the defendant of the benefit; and (3) the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without payment of its value." *Kunkle v. Asher*, 2006 WL 3231370 (Kan. App. 2006)(citing *Haz-Mat Resonse, Inc.* 259 Kan. at 177); *J.W.Thompson Co. v. Welles Products Corp.*, 243 Kan. 503, 512, 758 P.2d 738 (1988); *Jacobs v. Dudek*, 126 P.3d 1132, 2006 WL 213865 (Kan. App. 2006)(citing *Security Benefit Life Inc. Corp. v. Fleming Companies, Inc.*, 21 Kan. App.2d 833, Syl. Para 6, 908 P.2d 1315(1995). Under no circumstances would the payment of an agreed upon \$1,000,000 sum make defendants' acceptance of services plaintiff performed inequitable.

Further, the first element requires the pleading and proof that a benefit was conferred upon Defendants by Plaintiff. In Count II, paragraph 22 and in Count III, paragraph 28, Plaintiff does not delineate whether the services were performed under the May 13, 2003 written agreement or under the alleged subsequent oral agreement. Even under Plaintiff's Complaint, the services performed under the alleged oral agreement have been paid for and there could be no inequity for receiving those alleged services. Count II and Count III should be dismissed against all Defendants.

IV. ALL DEFENDANTS ARE ENTITLED TO DISMISSAL OF COUNT II ALLEGING QUANTUM MERUIT AND COUNT III ALLEGING UNJUST ENRICHMENT BECAUSE PLAINTIFF DID NOT PLEAD, AND CANNOT PROVE, THAT DEFENDANTS HAD AN APPRECIATION OR KNOWLEDGE OF THE BENEFITS THEY RECEIVED FROM PLAINTIFF'S SERVICES.

The elements of a claim for quantum meruit and unjust enrichment are set forth in detail in Argument IV. In short, the second element of both quantum meruit and unjust enrichment requires Plaintiff to plead and prove "an appreciation or knowledge by the defendant of the benefit" conferred upon it by the Plaintiff. This is not pled, nor can it be proved, by Plaintiff anywhere in its Complaint. For this reason alone, Count II and Count III should be dismissed against all defendants.

V. ALL DEFENDANTS ARE ENTITLED TO THE DISMISSAL OF THE REQUESTS FOR PRE-JUDGMENT INTEREST AND ATTORNEYS FEES SET FORTH IN COUNTS I, II, AND III.

All three Counts seek pre-judgment interest and attorneys fees. Count I seeks pre-judgment interest under a breach of contract theory. "Where an amount is due upon contract, either expressed or implied, and there is no uncertainty as to the amount which is due or the date on which it becomes due, the creditor is entitled to recover interest from the due date." *Caldwell-Baker Company v. Burlington Northern and Santa Fe Railway Company*, 142 P.3d 752, 2006 WL 2715998 at \*4 (Kan.App. 2006). However, uncertainty does exist as to the amount due. Thus, no prejudgment interest should be awarded and the claim dismissed.

Count II and III seek pre-judgment interest under quantum meruit and unjust enrichment, both unliquidated claims. "The general rule is that an unliquidated claim for damages does not draw interest until liquidated. A claim becomes liquidated when

both the amount due and the date on which it is due are fixed and certain, or when the same become definitely ascertainable by mathematical computation." *Caldwell-Baker Company v. Burlington Northern and Santa Fe Railway Company*, 142 P.3d 752, 2006 WL 2715998 at \*4 (Kan.App. 2006). Obviously, the claims for unjust enrichment and quantum meruit have not yet become liquidated. Therefore, Plaintiff's claim for prejudgment interest on Counts II and III should be dismissed.

Count I seeks attorneys fees under breach of contract. "The general rule regarding recovery of attorneys' fees is that 'in the absence of any contractual or statutory liability therefore, counsel fees and related expenses are not recoverable as an element of damages." *Hawkinson v. Bennet*, 265 Kan. 564, 962 P.2d 445 (1998)(citing *Wilshire Oil Co. v. Riffe*, 409 F.2d 1277, 1285 (10<sup>th</sup> Cir. 1969)and *Farmers Ca. Co. v. Green*, 390 F.2d 188, 192 (10<sup>th</sup> Cir. 1968)("under Kansas law and traditionally, attorneys' fees can be awarded only if provided for by contract or authorized by statute.")). Exhibit A to the Complaint is silent as to attorneys' fees. Therefore Plaintiff's request for attorneys' fees should be dismissed. Likewise, Count II and III seek attorneys' fees under quantum meruit and unjust enrichment. For the same reason, the prayer for attorneys' fees under those Counts should be dismissed.

### CONCLUSION

For the foregoing reasons, Counts I, II, and III of Plaintiff's Complaint should be dismissed.

DAVID R. SMITH, P.C.

By: s/ David R. Smith  
David R. Smith, #13664  
901 W. 43<sup>rd</sup> St.  
Kansas City, Missouri 64111  
(816) 573-1800  
(816) 778-0957 (FAX)  
dsmith@dsmith-law.com  
ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

On this 13<sup>th</sup> day of November, 2006, the foregoing was served upon the court and Counsel pursuant to ECF rules to Hazelton & Laner LLP, Joel Laner, Suite 650, 4600 Madison, Kansas City, Missouri, 64112.

s/ David R. Smith  
ATTORNEY FOR DEFENDANTS