

# Memorandum

**To:** Village Council  
**Organization:** Village of Brooklyn  
**From:** Frederick Lucas  
**Date:** November 22, 2017  
**Subject:** Corridor Improvement Act

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At the direction of the Village President, I have prepared this memo to answer questions that the Council may have regarding the proposed Corridor Improvement Ordinance. In particular, I was asked to respond to the following questions:

1. Does the CIA Act enable Council to exercise more powers than it already possesses, with or without either a CIA or DDA?
2. What powers does the General Law Village Act give to Council as to the issues raised by the Exponent article?
3. What, if any, injury could there be should Knutson's (et al) bring a lawsuit against the Village if their parcels are included in the CIA development area against their wishes? What should the Village's stance be in regard to a threatened lawsuit?

First, by way of background, the Village Downtown Development Authority (DDA) was formed in 2008 for the stated purpose "halting property value deterioration and increase property tax valuation where possible in the downtown business district in the village, to eliminate the causes of that deterioration and to promote economic growth". Section 42-41 of the Village of Brooklyn Code (VBC). Under the DDA ordinance, the DDA is vested with all powers granted by Act 197 of the Public Acts of 1975 (the DDA Act). Section 42-42 of the VBC. The powers vested in the DDA by the DDA Act are set forth in Section 7 of the DDA Act.

The Corridor Improvement Authority Act (the CIA Act), Act 280 of the Public Acts of 2005, was adopted by the Michigan Legislature 40 years after the adoption of the DDA Act, yet the stated purpose of the CIA Act is almost identical to the stated purpose of the DDA Act:

AN ACT to provide for the establishment of a corridor improvement authority; to prescribe the powers and duties of the authority; to correct and prevent deterioration in business districts; to encourage historic preservation; to authorize the acquisition and disposal of interests in real and personal property; to authorize the creation and implementation of development plans and development areas in the districts; to promote the economic growth of the districts; to create a board; to prescribe the powers and duties of the board; to authorize the levy and collection of taxes; to authorize the issuance of bonds and other evidences of indebtedness; to authorize the use of tax increment financing; to prescribe powers and duties of certain state officials; to provide for rule promulgation; and to provide for enforcement of the act.

The powers of the CIA Board are set forth in Section 11 of the CIA Act and these powers are almost identical to the powers granted to the DDA Board in the DDA Act. Attached to this memo is a comparison the powers granted under the two acts.

The Village of Brooklyn, as a general law village is vested with the authority granted by the State of Michigan as set forth General Law Village Act (GLV Act). While it would take many pages to list all of the powers granted to the Village under the GLV Act, most notably the Village is vested with the following authority:

1. The power to contract:

**§ 61.12. Village incorporated; body politic; powers**

A village incorporated under this act is a body politic and corporate under the name designated for it upon incorporation. By that name, the village may sue and be sued, contract and be contracted with, acquire and hold real and personal property for the purposes for which it was incorporated, have a common seal, change the common seal at pleasure, and exercise all the powers under this act.

2. The power to condemn property:

**§ 73.1. Condemnation**

Private property may be taken for public use in a village for opening, widening, altering, and extending streets, alleys, and avenues; for the construction of bridges, public buildings, and other public structures; for public grounds, parks, marketplaces, and spaces; for public wharves, docks, slips, basins, and landings on navigable waters; for the improvement of sanitary sewers, drains, ditches, storm water systems, water supply systems, and watercourses; for public hospitals; and for other lawful and necessary public uses.

3. The power to borrow money:

**§ 68.35. Bonds**

The village council may borrow money and issue bonds of the village therefor in anticipation of the payment of special assessments in 1 or more special assessment districts, which bonds may be an obligation of the special assessment district or may be both an obligation of the special assessment district and a general obligation of the village. The village council may issue general obligation bonds to defray that portion of the cost and expense of a local public improvement chargeable to the village at large.

4. Finally, a broad grant of authority to do anything that in Council's opinion is needed to advance the public good and the prosperity of the Village:

**§ 67.1a[1]. Powers and immunities of village**

- (1) Unless otherwise provided or limited in this chapter, the village is vested with all powers and immunities, expressed or implied, that villages are, or hereafter may be, permitted to exercise under the constitution and laws of the state of Michigan. The enumeration of particular powers or immunities in this act is not exclusive.
- (2) The village may do all of the following:
  - (a) Exercise all municipal powers in the management and control of municipal property and in the administration of the municipal government whether such powers are expressly enumerated or not.
  - (b) Do any act to advance the interests, good government, and prosperity of the village.
  - (c) Through its regularly constituted authority, pass and enforce all laws, ordinances, resolutions, and rules relating to its municipal concerns subject to the constitution and laws of the state.
- (3) The powers of the village under this act shall be liberally construed in favor of the village and shall include those fairly implied and not prohibited by law or constitution.
- (4) The specific powers listed in section 1 of this chapter shall not be construed as limiting the general powers set forth in subsections (1), (2), and (3).

**Questions:**

1. *Does the CIA Act enable Council to exercise more powers than it already possesses, with or without either a CIA or DDA?*

As can be seen from the list of powers enumerated above, most if not all of the powers granted by the CIA Act and DDA Act, are already vested with Council. About the only thing that these Acts grant to the Village which it did not already have is the ability to capture tax increments.

2. *What powers does the General Law Village Act give to Council as to the issues raised by the Exponent article?*

Again, the article in the Exponent is misleading as it implies that the Village, through the CIA Act, is granted vast powers which it does not presently possess, but as can be seen from the discussion of the authority of a Village under the General Law Village Act, a Village already has the powers enumerated in the article, regardless of whether it adopts the CIA Act.

3. *What, if any, injury could there be should Knutson's (et al) bring a lawsuit against the Village if their parcels are included in the CIA development area against their wishes? What should the Village's stance be in regard to a threatened lawsuit?*

Based on my review of the CIA Act, the threat of litigation is of little or no concern. Just as the authority of the CIA is defined in the statute, the criteria for properties which may be included in the CIA is laid out in Section 5 of the Act:

A development area shall only be established in a municipality and, except for a development area located in a qualified development area, shall comply with all of the following criteria:

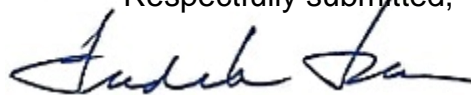
- (a) Is adjacent to or is within 500 feet of a road classified as an arterial or collector according to the federal highway administration manual "Highway Functional Classification - Concepts, Criteria and Procedures".
- (b) Contains at least 10 contiguous parcels or at least 5 contiguous acres.
- (c) More than 1/2 of the existing ground floor square footage in the development area is classified as commercial real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c.
- (d) Residential use, commercial use, or industrial use has been allowed and conducted under the zoning ordinance or conducted in the entire development area, for the immediately preceding 30 years.

- (e) Is presently served by municipal water or sewer.
- (f) Is zoned to allow for mixed use that includes high-density residential use.
- (g) The municipality agrees to all of the following:
  - (i) To expedite the local permitting and inspection process in the development area.
  - (ii) To modify its master plan to provide for walkable nonmotorized interconnections, including sidewalks and streetscapes throughout the development area.

As long as the properties included in the CIA meet the above criteria I see nothing in the Act which would authorize a property owner to challenge inclusion in the CIA.

If you have any further questions advise and I will respond.

Respectfully submitted,



Frederick Lucas  
Attorney at Law

~~§ 125.1657. Powers of board; creation, operation, or funding of retail business incubator.~~

~~(1) —~~ § 125.2881. Board; powers.

Sec. 11.

(1) The board may do any of the following:

- (a) ~~(a)~~ Prepare an analysis of economic changes taking place in the ~~downtown district~~ development area.
- (b) ~~(b)~~ Study and analyze the impact of metropolitan growth upon the ~~downtown district~~ development area.
- (c) ~~(c)~~ Plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility, an existing building, or a multiple-family dwelling unit which may be necessary or appropriate to the execution of a plan which, in the opinion of the board, aids in the economic growth of the ~~downtown-district~~ development area.
- (d) ~~(d)~~ Plan, propose, and implement an improvement to a public facility within the development area to comply with the barrier free design requirements of the state construction code promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.
- (e) ~~(e)~~ Develop long-range plans, in cooperation with the agency ~~which~~ that is chiefly responsible for planning in the municipality, designed to halt the deterioration of property values in the ~~downtown-district~~ development area and to promote the economic growth of the ~~downtown-district~~ development area, and take ~~such~~ steps as may be necessary to persuade property owners to implement the plans to the fullest extent possible.
- (f) ~~(f)~~ Implement any plan of development in the ~~downtown-district~~ development area necessary to achieve the purposes of this act, in accordance with the powers of the authority ~~as~~ granted by this act.
- (g) ~~(g)~~ Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties.
- (h) ~~(h) Acquire by purchase or otherwise, on~~ On terms and conditions and in a manner and for consideration the authority considers proper or for no consideration, acquire by purchase or otherwise, or own, convey, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests in the property, ~~which~~ that the authority determines is reasonably necessary to achieve the purposes of this act, and

to grant or acquire licenses, easements, and options ~~with respect to that property.~~

- (i) ~~(i)~~ Improve land and construct, reconstruct, rehabilitate, restore and preserve, equip, improve, maintain, repair, and operate any building, including multiple-family dwellings, and any necessary or desirable appurtenances to ~~that property~~ those buildings, within the ~~downtown-district~~ development area for the use, in whole or in part, of any public or private person or corporation, or a combination ~~of them~~ thereof.
- (j) ~~(j)~~ Fix, charge, and collect fees, rents, and charges for the use of any facility, building, or property under its control or any part ~~thereof~~ of the facility, building, or ~~facility therein~~ property, and pledge the fees, rents, and charges for the payment of revenue bonds issued by the authority.
- (k) ~~(k)~~ Lease, in whole or in part, any facility, building, or property under its control, ~~or any part of a building or property.~~
- (l) ~~(l)~~ Accept grants and donations of property, labor, or other things of value from a public or private source.
- (m) ~~(m)~~ Acquire and construct public facilities.
- ~~(n) — Create, operate, and fund marketing initiatives that benefit only retail and general marketing of the downtown district.~~
- (n) ~~(e)~~ Conduct market research and public relations campaigns, develop, coordinate, and conduct retail and institutional promotions, and sponsor special events and related activities.
- ~~(n)~~ (o) Contract for broadband service and wireless technology service in ~~the downtown district~~ a development area.
- ~~(p) — Operate and perform all duties and exercise all responsibilities described in this section. Notwithstanding any other provision of this act, in a qualified township if development area the qualified township has entered into an agreement with the municipality under section 3(7).~~
- ~~(q) — Create, operate, and fund a loan program to fund improvements for existing buildings located in a downtown district to make them marketable for sale or lease. The board may make loans with interest at a market rate or may make loans with interest at a below market rate, as determined by the board.~~
- ~~(r) — Create, operate, and fund retail business incubators, in the downtown district.~~

(2) ~~(2) — If it is the express determination of the board~~addition to create, operate, or fund a retail business incubator~~the powers enumerated~~ in the downtown district, the board shall give preference to tenants who will provide goods or services that are not available or that are underserved in the downtown area. If the board creates, operates, or funds retail business incubators in the downtown district, the board and each tenant who leases space in a retail business incubator shall enter into a written contract that includes, but is not limited to, all subsection (1), do 1 or more of the following:

~~(a) — The lease or rental rate that may be below the fair market rate as determined by the board.~~

~~(b) — The requirement that a tenant may lease space in the retail business incubator for a period not to exceed 18 months.~~

~~(c) — The terms of a joint operating plan with 1 or more other businesses located in the downtown district.~~

~~(d) — A copy of the business plan of the tenant that contains measurable goals and objectives.~~

~~(e) — The requirement that the tenant participate in basic management classes, business seminars, or other business education programs offered by the authority, the local chamber of commerce, local community colleges, or institutions of higher education, as determined by the board.~~

(a) Perform any necessary or desirable site improvements to the land, including, but not limited to, installation of temporary or permanent utilities, temporary or permanent roads and driveways, silt fences, perimeter construction fences, curbs and gutters, sidewalks, pavement markings, water systems, gas distribution lines, concrete, including, but not limited to, building pads, storm drainage systems, sanitary sewer systems, parking lot paving and light fixtures, electrical service, communications systems, including broadband and high-speed internet, site signage, and excavation, backfill, grading of site, landscaping and irrigation, within the development area for the use, in whole or in part, of any public or private person or business entity, or a combination of these.

(b) Incur expenses and expend funds to pay or reimburse a public or private person for costs associated with any of the improvements described in subdivision (a).

(a)(c) Make and enter into financing arrangements with a public or private person for the purposes of implementing the board's powers described in this section, including, but not limited to, lease purchase agreements, land contracts, installment sales agreements, sale leaseback agreements, and loan agreements.