

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
1/19/2016

SUBJECT:	SUBMITTED BY:
Lemon Tree Agreement Cancellation	David Fieldman Village Manager

SYNOPSIS

A motion has been prepared terminating a Sales Tax Rebate Agreement between the Village and Lemon Tree Grocer and waiving the “clawback” payment.

STRATEGIC PLAN ALIGNMENT

The Goals for 2015 to 2017 include *Strong, Diverse Local Economy* and *Steward of Financial, Environmental and Neighborhood Sustainability*.

FISCAL IMPACT

The termination of the agreement and waiving of the “clawback” payment would result in foregone revenue of \$25,169.

UPDATE & RECOMMENDATION

This item was discussed at the January 5, 2016 meeting. The Village Council discussed two potential actions:

1. A proposal by Commissioner White for an ‘earnback’ agreement (see attached email)
2. A proposal by Mayor Tully to cancel the agreement and waive the payment under the clawback provision upon reopening of the remodeled restaurant and grocery

The motion appearing on the January 19, 2016 Active Agenda is to cancel the agreement and waive the payment provided the Lemon Tree reopens as a minimum 1,000 square foot grocery store no later than October 1, 2016.

BACKGROUND

Lemon Tree Grocer has closed both the grocery store and cafe and plans to reopen with a larger restaurant and smaller grocery store. The revised operations would not be consistent with the terms of the existing sales tax rebate agreement and have triggered the repayment of 75% of the amount Lemon Tree Grocer has received in sales tax rebates. Lemon Tree Grocer submitted the attached letter requesting that the agreement be terminated and that the required repayment of the sales tax rebates be waived.

In May 2012 the Village entered into a sales tax agreement with Lemon Tree Grocer (http://www.downers.us/public/docs/agendas/2012/05-08-12/RES00-04737_LEMON_TREE.pdf). The agreement requires Lemon Tree Grocer to operate a grocery store as the primary business for at least 13 years from the effective date of the agreement and the Village to rebate 100% of the sales tax revenue generated from the grocery store. Ceasing to operate the grocery store in accordance with the agreement requires Lemon Tree Grocer to repay to the Village all or a portion of the amount of sales tax rebates paid according to the following schedule:

If Lemon Tree fails to continue to operate, it shall forfeit the withheld quarterly payment and shall pay back the tax rebate on the following schedule:

- Year 1 through 3: 100% of the Incentive Payment
- Year 4 through 6: 75% of the Incentive Payment
- Year 7 through 10: 50% of the Incentive Payment
- Year 11 through 13: 25% of the Incentive Payment

Since the effective date of the agreement (October 2011) Lemon Tree Grocer has generated \$38,004 in Village sales tax revenue. According to the agreement, 75% of the rebate payments (\$28,503) must be paid back to the Village. The Village is currently holding back \$3,333. The balance owed to the Village is \$25,169.

ATTACHMENTS

Email from Commissioner White
Letter from Lemon Tree Grocer

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney DATE: January 19, 2016
(Name)

RECOMMENDATION FROM: _____ FILE REF: _____
(Board or Department)

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to waive the reimbursement payment due to the Village pursuant to Article 6.2 of the Sales Tax Rebate Agreement between the Village of Downers Grove and Lemon Tree Grocer, LLC, dated May 8, 2012 and to declare the Agreement null and void, provided that Lemon Tree Grocer, LLC reopens a minimum 1,000 square foot grocery store at 5101 Mochel Drive no later than October 1, 2016.

DD

SUMMARY OF ITEM:

Adoption of this motion shall waive the reimbursement payment due to the Village pursuant to Article 6.2 of the Sales Tax Rebate Agreement between the Village of Downers Grove and Lemon Tree Grocer, LLC, dated May 8, 2012 and to declare the Agreement null and void, provided that Lemon Tree Grocer, LLC reopens a minimum 1,000 square foot grocery store at 5101 Mochel Drive no later than October 1, 2016.

RECORD OF ACTION TAKEN:

MEMORANDUM

To: Mayor & Council and Village Manager
From: Bill White, Commissioner
Re: Lemon Tree Rebate Agreement
Date: January 5, 2016

After thinking about the Lemon Tree agenda topic and speaking one-on-one with other council members, I wish to offer an alternative solution that I believe better fits the underlying interests of all stakeholders.

1. Terminate the existing sales tax rebate agreement;
2. The Village retains \$3,333 and Lemon Tree waives any claim to that sum;
3. With respect to the \$25,169 which would otherwise be due the Village:
 - a. The Village will refrain from taking any steps to collect the \$25,169 provided Lemon Tree re-opens with a larger restaurant and smaller grocery section as proposed, within an agreed time period;
 - b. As long as Lemon Tree remains open with a larger restaurant and smaller grocery section as proposed, the Village will refrain from taking any steps to collect the \$25,169; and
 - c. For every dollar of sales tax generated from grocery sales following re-opening, a dollar of the recapture amount of \$25,169 will be forgiven. Based on projected annual grocery sales of \$700,000 for the "new store" the entire amount would be forgiven in less than four years.
4. If Lemon Tree thereafter closes the grocery portion of the business, the remaining amounts to be recaptured (if any) would be calculated and would remain due.

The following underlying interests are better satisfied by the foregoing:

- A. Lemon Tree can be entirely relieved of the obligation to repay \$25,169 provided they follow through with their stated intention to re-open with a larger restaurant and smaller grocery, and thereafter remain open;
- B. The Village retains at least some measure of leverage to assure that a downtown grocer remains open; even if on a smaller scale than originally contemplated;
- C. The Village avoids setting a precedent of simply walking away from its negotiated rights.

EOM

December 23, 2015

Mr. David Fieldman

Village Manager

Village of Downers Grove

801 Burlington Avenue

Downers Grove, Illinois 60515

Dear David,

Lemon Tree Grocer is formally requesting to void the current tax rebate agreement and waive the claw back portion of the contract. While we understand the current agreement does not allow such a provision, we also believe that the spirit in which the agreement was written has, and will continue to be satisfied. We have outlined facts and projections below that create a strong case where the interests of the Village Council of Downers Grove, the Downers Grove community and the residents of Acadia building #3, would be best served by eliminating the current agreement.

Since the inception of this agreement in 2012, Lemon Tree Grocer has generated close to \$65,000 in sales tax revenues that have been paid to the Village of Downers Grove. Per the current agreement, more than half of these proceeds have been refunded to the business to assist with the economic challenges a downtown Downers Grove grocery store faces. We have attached a projected PNL for your official review.

If the agreement was dissolved, the Village would net \$31,000 per year (under the new proposed business model). In the first year, the Village would recoup close to the entire amount deemed owed for the entire agreement. After five years of conducting business in this current retail space and understanding further what the community wants and can financially sustain, our business is confident the numbers we have provided are conservative.

As you can see, the Village's potential revenue would be substantially higher than the current agreement could allow.

The situation at Acadia building #3 requires a delicate balance between being a responsible retailer and good neighbor. For instance, plumbing issues have been a consistent problem for Lemon Tree Grocer since the opening of our business. Residents have been upset with the developer and our current landlord. In many cases this frustration has created tension and has tarnished our business acumen and our 'good neighbor' relationship with current Acadia residents. We are also faced with the challenge of poorly planned outdoor storage and proper coverage that covers our coolant system. This has caused Acadia residents to air major concerns in the solutions that have been made to date. We have been working with Chris Rintz and upon the approval of our proposal and during the remodel process we plan to come to resolutions with him to satisfy the concerns of the residents of our building.

To those who may pose the question that terminating this agreement would show potential preferential treatment towards one business, we believe it will show the compassion of a municipality who is willing to adapt and work with the ever-changing business economic climate.

Upon arriving in Downers Grove in 2010, our partner business, Michael's Fresh Market, with whom our tax rebate was contingent upon, closed its doors in a short period of time. In the five years we have been in business, larger grocery retailers such as Standard Market in Westmont, Caputo's Fresh Market (in the former Dominick's space on Ogden) and Fresh Thyme Market, have all impacted our resources and have become strong competitors in our marketplace.

Both myself and Tim Canning have made a strong commitment to the Downers Grove community to constantly evolve with these business challenges in this competitive market space and have not lost our drive or commitment to continue to serve this community for many years to come.

Since Lemon Tree Grocer entered the Downers Grove business community, our retail business (through the Canning Foundation) has contributed over \$150,000 to local charities and various community organizations. We've given over \$250,000 discounts specifically aimed at seniors and neighbors and consistently sold milk and other staples at cost. We have contributed not only through monetary efforts but have also volunteered over 200 hours of our resources to consistently support organizations such as the local Indian Boundary YMCA, the Downers Grove Junior Women's Club, and most recently, serving to support our District 58 school community by serving as Vice President of the Education Foundation of Downers Grove District 58. My hope is to move my family to Downers Grove next year after my first child is born. We are heavily invested in the success of the Downers Grove business community as well the future and sustainability of the community as a whole.

I am personally looking forward to ways we can also create further sustainability and camaraderie in our downtown Downers Grove business community. Since serving on the Education Foundation these past 2 years, the hard work and dedication of our volunteer board members inspired me to develop a special fundraising retailer program called "Shop to Earn" to raise the necessary funds and awareness for District 58 to support more educational programs. We are close to the launch of this fundraising

program and the response from other local retailers participate in this program has been overwhelming. This program model will not only help our local school district with much needed funding, it will also help local businesses give a percentage of sales back to a customer's school of choice and improve the chances our downtown can become sustainable.

Lemon Tree Grocer is asking for the Village of Downers Grove's support of our new business concept planned for the footprint at 5105 Mochel Drive. We humbly ask the village staff and elected officials that govern this community to allow us to complete the work that we have proposed to do and to evolve our business for healthier sustainability and growth for many years to come.

Thank you for your consideration and Happy Holidays.

Sincerely,

Shaun Black

Co-Owner

Lemon Tree Grocer

**NEW STORE
PROFORMA
2016**

SALES:**SALES**

		PROJECTED PROFORMA BEGINNING	
GROCERY & PRODUCE SALES	105,000		15.0%
PREPARED FOODS & MEAT SALES	301,000		43.0%
BEER/ WINE	189,000		27.0%
PASTRY	14,000		2.0%
NON-ALCOHOLIC BEVERAGES	700		0.1%
CATERING	90,300		12.9%
TOTAL GROCERY SALES	700,000		100.0%
<i>TOTAL TAX REBATE</i>	<i>7,000</i>		<i>1.0%</i>
TOTAL GROCERY SALES	707,000		30.3%
<u>BAR SALES</u>			
ZEST FOOD	1,120,000		70.0%
ZEST WINE	192,000		12.0%
ZEST ALCOHOL	112,000		7.0%
ZEST BEER	128,000		8.0%
ZEST N/A BEV	48,000		3.0%
TOTAL ZEST SALES	1,600,000		69.4%
<i>VILLAGE TAX DOLLARS</i>	<i>24,000</i>		<i>1.5%</i>
TOTAL ZEST SALES	1,600,000		69.4%
TOTAL SALES	2,307,000		100.0%