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Urban Affairs Committee  
September 29, 2017

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[LR60 LR138]

The Committee on Urban Affairs met at 1:30 p.m. on Friday, September 29, 2017, at the Hall County Extension Office, Grand Island, Nebraska, for the purpose of conducting a public hearing on LR60 and LR138. Senators present: Justin Wayne, Chairperson; Matt Hansen, Vice Chairperson; Sue Crawford; Sara Howard; and Dan Quick. Senators absent: Tyson Larson and Merv Riepe.

SENATOR WAYNE: All right, we're going to go ahead and open up our hearing. Good afternoon and welcome to the Urban Affairs Committee. My name is Senator Justin Wayne. I represent the Legislative District 13 in north Omaha, northeast Douglas County, and I serve as Chair of Urban Affairs Committee. We will start off having members of the committee and committee staff do self-introductions, starting with my right, Senator Howard.

SENATOR HOWARD: I'm Senator Sara Howard, I represent District 9 in midtown Omaha.

SENATOR HANSEN: Senator Matt Hansen, representing District 26 in northeast Lincoln.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

SENATOR QUICK: Senator Dan Quick, I represent District 35 here in Grand Island.

SENATOR CRAWFORD: Good afternoon. Senator Sue Crawford from District 45, which is eastern Sarpy County, Bellevue, and Offutt.

ANDREW NORTHWALL: Andrew Northwall, committee clerk.

SENATOR WAYNE: And I think I saw Senator Halloran.

SENATOR CRAWFORD: Yep. [LR138]

SENATOR WAYNE: You can introduce yourself, too, if you want.

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SENATOR HALLORAN: (Inaudible.)

SENATOR WAYNE: (Laughter) This afternoon we will be hearing two interim study resolutions: LR138, an interim study to examine the tools, mechanisms, and funding sources available to municipalities to provide for condemnation or demolishing vacant properties or abandoned buildings; and LR60, an interim study to examine the issues that are related to TIF, which is tax increment financing, that were raised in the December 2016 report by the State Auditor's Office. In the back of the room back there by the exit sign...I do just want to mention that there's three exits. Sorry, this is my old training that I used to have where I would always make sure people know fire, life, and safety. So there are three exits and if you go out to the left there's a door. You can exit out to the door. We won't count numbers, but make sure the person next to you is outside in the parking lot if something happens. If not, you will be held responsible. In the back of the room you will also find blue testifier sheets. If you are planning to testify today, please fill out one sheet and hand it to Andrew before coming up, which is sitting over at the left. And this will help keep accurate recording of the hearing and make sure we have accurate information of who testified. If you would like to give handouts to the committee, please hand out ten of them, and please give them to Andrew. If you do not wish to testify but would like to record your presence at the hearing, please fill out the pink sheet in the back of the room and we will make sure it's noted for the record. Testimony for each interim study will begin with the introducer's opening statement. After the opening statement we will hear from the invited testifiers, after which we will hear testimony from the public. Since these are interim studies there will be no proponent or no opponent testimony. We ask that you begin your testimony by giving your first and last name and spell them correct for the record. We ordinarily use a four-minute light system in Urban Affairs, but since we do not have lights we will basically go off of here goes 30 seconds when I look at you and give you a real big nod. Or I'll write red and yellow. We'll figure it out, but try to keep it with under four minutes. I'll let you know when there's 30 seconds left on your testimony, so please try to give your final thoughts and wrap it up. I would like to remind everyone, including senators, please turn off your cell phones or put them on vibrate. And with that, we will begin today's hearing with LR138. Welcome, Senator Crawford. [LR138 LR60]

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SENATOR CRAWFORD: Thank you. Complying with the cell phone rules here. Good afternoon, Chairman Wayne and members of Urban Affairs Committee. My name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and Sarpy County. I'm happy to be here today to open on LR138, an interim study to examine the tools, mechanisms, and funding sources available to municipalities to provide for condemnation or demolition of vacant and abandoned properties. During the 2017 Session I introduced LB371, which eliminated obsolete statutes related to the Fire Marshal's condemnation authority. The statutes that were eliminated were originally passed in 1925 and had not been used by the Fire Marshal in years. The elimination of this language clarifies that condemnation issues must be addressed at the local level, through the nuisance ordinances authorized in 18-1720. Although this bill passed unanimously because it was eliminating an authority the Fire Marshal no longer used to carry out its work, the floor debate on the bill raised important questions about the challenges of condemnation and demolition of these deteriorating buildings and what resources are available to address this issue, which is why I introduced this interim study. After meeting with key stakeholders throughout the summer to better understand the extent of this issue and the resources that are currently available, it became clear this is a widespread issue that is adversely affecting many municipalities across the state. From my discussions with stakeholders, I've come to understand the two largest barriers that currently keep municipalities from effectively renovating or demolishing these properties are: one, the difficulty of acquiring title to the property in a timely manner; and two, the lack of funds to complete the demolition. I'll take just a few minutes to highlight a few of the obstacles to acquiring title. I'm sure you'll hear from many behind me in more detail what it looks like in their own situations. Acquiring the title is a time-intensive and expensive process in most cases, and is especially onerous for municipalities who do not have access to a city/county attorney. The limited resources for these smaller municipalities are stretched even more thin when trying to locate an absentee owner. Habitat for Humanity of Omaha has submitted a letter to the committee that is on your table that elaborates on the nuisance issues that can arise when trying to secure title to the property. So it lays out about four or five scenarios that show some of the most common difficulties in securing title to a property. When they cannot secure title, a municipality can demolish the property and levy a special assessment on the property for those costs. Those costs on average are between \$10,000 and \$12,000 or even more if there's lead or asbestos removal that's necessary. Because of the high cost of demolition, most municipalities do not have the budget to perform this work up

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front, so no further action is taken and the problem property remains. If they do demolish the property, they are left with a vacant lot that they do not have the legal rights to and are out thousands of dollars that they paid to demolish it. Per Statute 18-1722, civil action can be taken to reclaim these funds, but the legal cost associated with this action is often prohibitive. These liens to the title may also deter investors who are contemplating purchasing the property. After working with Legislative Research and to compile a list of resources, we have identified that there are no federal programs available to help with these costs, and only two state grant programs available to address these properties. One of these grants is offered through the Department of Environmental Quality and is known as the Deconstruction Grant Program. This grant program, which is only available to cities of the second class, villages, and counties of 5,000 or fewer population, reimburses awardees for part of the cost of deconstruction of a vacant or abandoned property when some of the materials that are extracted are reused and recycled. Unfortunately, there are many barriers that keep municipalities from qualifying for and using this grant. The Department of Environmental Quality could not send someone here to testify today but provided materials with us to outline some of those obstacles and those...and that is provided at your place as well. Today, only four municipalities have utilized this grant since its inception in 2009. And one of the major obstacles is the municipality must secure title to the property to use the grant. If they do secure title, utilizing the grant is still difficult. This is due to the formula by which the grant awards are determined. And the amount received is the total cost of the deconstruction times the percent of the materials that can be reused and recycled, and that is problematic because that percent that can be reused or recycled is often not very high for the municipality, so there is a gap in terms of resources to be able to use those awards to pay for those deconstruction costs. Again, I encourage you to see the information provided by the DEQ in your materials to get an overview of what that grant looks like. The other grant available to municipalities is offered by the Nebraska Environmental Trust. Although municipal projects to address vacant and condemned structures are technically eligible, only two grants have been awarded to municipalities in the past 11 years. And these grants technically went to organizations from Omaha and Lincoln and were for larger projects to soft strip or hard strip multiple residential properties for reusable and recyclable material. Again, the focus is on the recyclable material, reusable material. Unfortunately, smaller municipalities with single residential properties that are vacant and deteriorating are not competitive for this grant process. Through our research we, therefore, concluded that funds...have concluded that the funds

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available for municipalities to address these properties are very limited, and the funds that are available have restrictive reuse and recycling qualifications that make it difficult for municipalities to use these funds to demolish their problematic structures. What we have heard from the League of Municipalities, the Department of Environmental Quality, and Habitat for Humanity is that many of the issues and costs associated with these nuisance properties could be avoided if municipalities and organizations like Habitat could secure ownership of properties more quickly. As a result, these properties will be more likely much more salvageable when they do require them. And this could result in current reuse and recycle grants being used more frequently and would also create better chance for the property to be sold to potential homeowners and renovated, instead of always needing to be demolished. Municipalities currently have the authority to pass and use nuisance abatement ordinances to try to address these properties. They are also able to create vacant property registries to help identify the owners of the problem properties, which allow the municipalities to better track absentee property owners who are not maintaining their properties and issue fines as a way to persuade the owners to take action before the property needs to be condemned or demolished. Currently, only five municipalities across the state use this tool. Senator Briese's LB256, which is on General File, will clarify municipal authority to pass such ordinances and could result in more municipalities using this tool to hold homeowners accountable before the property becomes a nuisance. A representative from the League of Municipalities is here to talk to the committee today about the extent of this issue in our state, as well as opportunities and barriers for particular tools...excuse me, that these particular tools create for municipalities. Some states have taken different approaches to ensure that municipalities can acquire these properties in a timely manner, or assess funds they need to address demolition. For example, several states, including Minnesota, Missouri, West Virginia, and New Hampshire allow for liens on property insurance or fire insurance proceeds. Other states, such as New Jersey, Washington, Iowa, and Tennessee, have established eminent domain processes that allow municipalities to purchase vacant or deteriorating properties in order to rehabilitate them for various uses. In Iowa, a city in which an abandoned building is located may petition the court to enter judgment, awarding title of the abandoned properties to the city if certain strict criteria are met. Some states have also created grant programs that are specifically for municipalities dealing with vacant and abandoned properties that do not have rigorous reuse and recycling requirements that can be prohibitive for small municipalities dealing with much older properties. During our meetings with stakeholders

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we also spoke to the Omaha Land Bank and the South Central Economic Development District. In these conversations we learned about the work the land bank is doing in the Omaha metro area to address vacant and abandoned properties through their public/private partnerships. They've been able to work with the city and officials and businesses to facilitate the purchase and sale of vacant and condemned properties. Behind me are testifiers who will speak to the work being done by the land bank and the economic development districts. They will also speak to the opportunities they believe could be created for smaller municipalities across the state to deal with these properties if the land bank model could be used in strategic regions across the state. Overall, the resources available to municipalities in our state to address these challenges are quite limited. And I appreciate the committee's attention to this important issue and look forward to ongoing conversations about what we as a state can do to improve the ability of our municipalities to address these problematic properties. And I'm happy to answer any questions that you have. [LR138]

SENATOR WAYNE: Thank you. Any questions from committee members? Thank you. [LR138]

SENATOR CRAWFORD: Thank you. [LR138]

ANDREW NORTHWALL: We don't have any invited testifiers on this one, so. [LR138]

SENATOR WAYNE: So we'll open this...since we don't have any invited testifiers on this particular issue, we will open it up to the public for public comment. [LR138]

LYNN REX: (Exhibits 3 and 4) Senator Wayne, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. What's being passed out to you is a copy of LB614, introduced by Senator Schumacher in 2013. This bill did not make it out of the Banking Committee. But this bill was based on LB409, which was introduced by Senator Dennis Utter in 2011. And Senator Dennis Utter was able to get his bill out of committee on General File; and LB614, introduced by Senator Schumacher, simply would codify what the standing committee amendment was in LB409. Basically we have not been able to get a bill out of the Banking Committee since that time. There have been issues relative to this. Senator Utter was able to negotiate a compromise with the bankers association, the realtors,

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the insurance companies, and others to facilitate getting his bill advanced. Unfortunately, Senator Utter passed away, and as a consequence the momentum for that really didn't follow through. One of the things that Senator Schumacher tried to do was also get the stakeholders together to reach some kind of a compromise. I have handed out to you LB614, but please note that that actually is the same amendment that was passed out of committee with Senator Utter. That being said, if you look at what the bill would do or would have done, this bill basically allows municipalities to do what cities in Iowa and other states are allowed to do. Senator Arnie Stuthman, back in earlier days, had introduced two different bills that would...were based...basically those bills were based on Kansas laws that allow those municipalities to do something very similar. And that is that once you've had some type of a damage and you have basically an insurance claim filed for property, LB614 would require the insurer to withhold 10 percent or \$10,000, whichever is greater, and then...and Arnie Stuthman's bills were 25 percent or \$25,000. And then basically those...that retention would be set aside, and it would be used by the city, but set aside for two thing...for three reasons: one, the property is located within the limits in any zoning jurisdiction of a city, county, or village; two, the property is uninhabitable or unfit for use; and three, proof of insurance. It also says that basically if the city doesn't proceed within 120 days they have to release that back. And this also has an immunity clause to it. So we think that that bill is a good model and a good starting point in the event that this committee would like to look at some options that would be there. We do see that in other states, not just in the Midwest but across the country, municipalities do have the authority to deal with these kinds of issues. And the reason why Arnie Stuthman brought this bill forward is because at the time the city of Columbus had a fire chief, and he was from Columbus, represented the city of Columbus. And there was a fire chief that was from Kansas that said, wow, I don't understand why it is that Nebraska municipalities do not have this authority when in Kansas we're able to do this. Dennis Utter took on the mission when Hastings lost I believe four blocks of their downtown city due to fire. Their city administrator from Hastings is here today, and Joe Patterson may be able to elaborate further on that. I've also handed out to you a flow chart. I brought extras for anyone that's interested. It's the nuisance flow chart, in terms of the complication that it really is to try to get to "yes" so that you can address these abandoned properties, and also the unsafe building flow chart. These are really critically important because, you can see from the complexity of it, it goes on for quite a period of time before a city can even begin to address it. And as Senator Crawford said, for one of the two grant programs available,

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the only way to access that is if you have title. That seems to be the biggest problem. One of the other challenges of course is trying to find nonresident owners who frankly don't care anymore, and even if a city moves forward to file a lien and goes through those types of processes, they don't care because they're not coming back and they have no incentive to take care of that property. So we've done a lot of training on these issues. I know that there are a number of people here to testify relative to TIF and also relative to these issues. So I'm happy to answer any questions that you might have, and I appreciate the committee focusing on these issues. If not, thank you very much. [LR138]

SENATOR WAYNE: Any questions? I have a question. [LR138]

LYNN REX: Oh, I'm sorry. [LR138]

SENATOR WAYNE: So why not use eminent domain to get rid of houses that we have problems with and develop them? [LR138]

LYNN REX: Okay, and I'm going to repeat the question for the people in the back. Why not use eminent domain to deal with this? It is extremely controversial to do that. And so we do have cities, and Grand Island is one, and all of you were on the tour, basically using PRTs. And they get a team together to try to meet with the homeowner, try to encourage that person to take care of the property, try to get...first of all to identify who is responsible for it, because many times with these properties they're abandoned. And even trying to find that owner is important. But, Senator, the reason is it is so controversial to do it. It is probably one of the least cost-effective ways to do it. [LR138]

SENATOR WAYNE: But is it controversial because of all the notice requirements and people actually know that somebody's land is being taken away? And are we going around that by allowing another entity to condemn and basically take ownership of that property without going through the same public process? [LR138]

LYNN REX: I don't think I understand the question. I mean, eminent domain is controversial in and of itself,... [LR138]

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SENATOR WAYNE: Correct. [LR138]

LYNN REX: ...regardless of the project, but I think especially so when you're dealing with houses. I think it really is. It's been very controversial. We've had a couple of people over the years, city council members and village board members, that have been subjected to recall elections over it. So it is very controversial. So that's why cities developed, and Wayne, Nebraska, is the one that gets the credit for this. Lincoln, Grand Island, many other cities are now using these PRT teams to basically say you have a complaint filed, it's going to go to the team, the team of the safety people, the city administrator typically, fire folks, and others that are going to sit down with them and say, what can we do to try to get this resolved. But if they have to, then they go through the nuisance project...process, I'm sorry, and then deal with all of these issues. And in terms of the State Fire Marshal bill that you passed a few years ago, which we really appreciated, municipalities, basically we're not using that mechanism. It really does need to be a local solution. But we do need...municipalities in this state do need the authority, an additional authority, to address these serious issues. And it's becoming I think a more aggressive problem in cities across the state of Nebraska. And as you know, we've got 529 cities and villages in this state, with five forms of government, five classes of cities, and different statutes governing all of the above. So we certainly need your help in trying to address this and working with others. Senator Dennis Utter did a great job trying to get the parties together, and I think that's why he was so successful in getting a bill out of committee. And I would hope that this committee would take seriously all the testimony, I know you will, that Senator Crawford has presented. And I'm sure there will be others, too, that will follow me. [LR138]

SENATOR WAYNE: Are there questions from the committee? Seeing none, thank you. [LR138]

LYNN REX: Thank you very much. [LR138]

SENATOR WAYNE: Any other public comment? [LR138]

SHARON HUEFTLE: Good afternoon. [LR138]

SENATOR WAYNE: Good afternoon. [LR138]

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SHARON HUEFTLE: (Exhibit 5) I'm Sharon Hueftle with the South Central Economic Development District, covering 13 counties in south-central Nebraska. Our offices are in Holdrege. Sharon is S-h-a-r-o-n, Hueftle, H-u-e-f-t-l-e. I just want to visit with you a little bit about what we've seen. South Central, or, as we call ourselves, SCEDD, we are one of eight economic development districts in Nebraska. So there's a handout in your flier about NROC. But while working in our district, we often come across abandoned residences where the property has been passed on. Maybe the owner has passed away, home is sitting vacant, and the current owner or next of kin may have good intentions but they are not getting anything done. It's sitting there for years and has become severely deteriorated. Because, you know, regardless of the cause, these living units create a negative image on the community and they prohibit progress for that community, so I want to talk about some of the tools that communities are able to use to address the dilapidated properties. The first is nuisance abatement. Some communities try to do this on their own, generally it's complaint driven, and so that can create difficulty for village and city board members because it can have negative impact if they're a business owner or if the parcel owner is a teacher or coach for their child. It can also put a bad light on the board or council. They get the perception of being biased enforcement or picking on somebody. And several members of the Nebraska Regional Officials Council offer a nuisance abatement program and we have been doing this since 2012. There's a handout in your folder on the nuisance abatement program. This program allows communities to have a third party to come in and have oversight. We do a nondiscriminatory review of properties in a designated area of the communities. All parcels are reviewed equally based on a checklist from the standard nuisance ordinance. A majority of nuisances are cleared by the property owners, however, about 2.5 percent will be abated and that often includes demolition of a vacant structure. City pays for that abatement, including demolition, and then the bills are billed back to the property owner, the...and if it's not paid in 60 days, then they can put a lien on the parcel. But particularly in smaller communities, those that are less economically advantaged, the cleanup of the...the cleaned-up parcel sits vacant and the council or the village board holds the bill. They are able to foreclose on that lien, but it takes time and resources. They have to work through a process and then there's a two-year redemption period. Another tool, adopting the International Property Maintenance Code, allows communities to address vacant and dilapidated properties. There's a handout on that code. This gives the city authority to designate a structure to be demolished and removed if it is dangerous, unsafe, or unlivable. This tool is a good complement to nuisance

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abatement, however, the cost of removing structures is still a legitimate burden to the communities. In our experience, the average cost to get rid of a residential structure is \$10,000 to \$12,000. Superior has been working with our nuisance abatement program and really working to address their dilapidated property. And the last flier that you have just kind of outlines what they've done and the cost to that community. There are a couple other options that exist that discourage property owners from leaving structures vacant. One of those is the vacancy registry. And we don't see that happening in our district right now. We've been tracking vacant, dilapidated structures that we encounter, and we hope to be able to assist communities with this in the future. Another tool is the ordinance for mandatory utility hookups, which requires residential property to be connected to city utilities. Again, it works as a disincentive for leaving that residential property vacant, and it helps to identify if you have a property that has collapsed sewer or, the water lines, the copper pipes have all been stolen. If you are required to hook up to city utilities, pretty quickly you realize we have a nonlivable house because it cannot be connected. Some communities utilize their zoning ordinance to find a residence that isn't habitable. They'll identify a nonresidential structure and they'll say, this doesn't work, your zoning ordinance says this is a residential area. Owners are given the option of making habitable or removing it, and if they don't make it habitable they can use the nuisance ordinance to demolish that. All these tools have been proven effective in code enforcement and have led to some tangible successes in many communities but they have a major limitation. They leave the community with a vacant lot. They do not address redevelopment. And although cities can utilize foreclosure or tax sale, there's no really efficient way for a city to acquire or rehabilitate or redevelop a property. So we have been following the work of the Omaha Land Bank and we believe a similar tool would give towns a streamlined way to obtain a clear title and redevelop parcels that the private sector is not currently addressing. If communities had access to funds and the institutional knowledge and connections of a land bank to turn those dilapidated properties into thriving ones, the impact on our communities could be monumental. A land bank could fill the gap that currently exists between a vacant lot and a productive parcel in the community. Personally, I believe one possible solution would be to use the established regions set up. You'll see again the map of NROC, those development districts. Those could be used to grow effective land banking all across the state. So thank you for the opportunity to speak to this. Do you have questions? [LR138]

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SENATOR WAYNE: Do we have questions? Hearing none, nope. Oh, go ahead, Senator Crawford. [LR138]

SENATOR CRAWFORD: Could you just speak a bit of what you might envision in terms of how the region would work with municipalities on a regional land bank? [LR138]

SHARON HUEFTLE: Well, what we find out in our area is limited staff in the communities. And so my concern if we tried to have every community set up their own, those smaller communities would really be left out. And so we would be able to work with the authority of the city to just help manage that on a regional level to make that more efficient, obviously tapping into the expertise that's already been developed because of the Omaha Land Bank and being able to lean on that, but just to be able to do that on a region-wide. So you have one entity doing this for the counties across a region, and again it could be split this same way. I'm sure there's other ways. It just makes sense in terms of efficiencies. Then you have one entity that has the expertise, they're doing it other places, they can connect. If this attorney needs help, you can connect him to an attorney in another community or another county that is walking through this more often and has more experience. And so that's how I see that happening. [LR138]

SENATOR CRAWFORD: Just one other question. [LR138]

SENATOR WAYNE: Go ahead. [LR138]

SENATOR CRAWFORD: Thank you. In the handout from Superior, you mention that they used LB840 funds for demolition. Could you speak to how they used those funds? [LR138]

SHARON HUEFTLE: Their LB840 can be used for housing, so they were able to acquire some properties and then take them down. They are actually purchasing them first and then...and the plan is to redevelop. [LR138]

SENATOR CRAWFORD: Thank you. [LR138]

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SENATOR WAYNE: So there's tools already available for cities to do this if they went the LB840 funds route? [LR138]

SHARON HUEFTLE: Limited. I mean, you still...the cost is still higher because if there's tax liens, and you have a harder time getting clear a title. So it has to be in a special circumstance that they're able to affordably get a clear title and own the property. [LR138]

SENATOR WAYNE: So...okay. [LR138]

SENATOR CRAWFORD: Senator? [LR138]

SENATOR WAYNE: Go ahead. [LR138]

SENATOR CRAWFORD: So just to clarify, one, they would have the funds only if they acquired the property; and two, their LB840 plan would have to have this as a purpose in their LB840 plan. Is that... [LR138]

SHARON HUEFTLE: Right. It is legal in Nebraska now for LB840 funds to be used for housing, but it has to be reflected in their local plan. So that would be the first step. They would have to have enough funds to be able to acquire the property, and then once they acquire it they have to have additional funds for demolition. [LR138]

SENATOR CRAWFORD: Thank you. [LR138]

SHARON HUEFTLE: All right. Thank you much. [LR138]

MARTY BARNHART: (Exhibit 6) Good afternoon, Senators and staff. My name is Marty Barnhart. I'm from Omaha, Nebraska. I'm the executive director of the Omaha Municipal Land Bank. My name is spelled M-a-r-t-y B-a-r-n-h-a-r-t. "A Catalyst for Transforming Distressed Properties into Community Assets," this is the mission of the Omaha Municipal Land Bank. Our goal is simple, to acquire problem properties in distressed neighborhoods and require them to be redeveloped. Land banking was first used in 1971 in St. Louis, Missouri. The next generation

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was concentrated in the northeast part of the United States in 2008 when the mortgage crisis swept through our nation. Nebraska is now the third generation of land banks. Our Nebraska Legislature, our Nebraska Unicameral, unanimously passed legislation in July 2013 and sent it to the Omaha City Council, who likewise unanimously passed an ordinance in July 2014. Mayor Jean Stothert appointed the first 13 board of directors who were seated in December 2014. These directors wrote policy during 2015, hired an executive director, finished their strategic plan, and wrote proposals with vendors in 2016. This year, in 2017, two additional staff have been hired and an inventory has been listed at [omahalandbank.org](http://omahalandbank.org) for viewing, application, and sale. To date, 38 properties have been sold, totaling over \$145,000 in revenue. The goal of the land bank is not dollars, but redevelopment. Due to legislative authority as a political subdivision of the state, the Omaha Land Bank is able to clear title for delinquent taxes and/or assessments and offer the property for sale with maximum equity. Often, a property is sold with 50 to 90 percent equity, giving an individual, nonprofit, or for-profit purchaser the opportunity to rehab the property and transform a neighborhood. Acquisition of property is done from four categories: tax delinquency, code enforcement, bank real estate owned properties, and donated properties. These categories allow the Omaha Land Bank to work with the city and county to assist with foreclosure and purchase abandoned properties. Also, banks contact the Omaha Land Bank to ask if they can sell or donate their real estate that has not been able to be obtained from regular investors or were not interested in purchasing those properties. We have been given or have purchased five properties from First National Bank of Omaha and Wells Fargo bank. In November, we will administrate nearly 600 foreclosures for Douglas County through an interlocal agreement. We are also working with the city of Omaha to purchase up to 4,000 code enforcement properties that have violations and/or are abandoned. Additionally, we'll assist the city of Omaha this year with demolition of up to 400 homes during the next four years, 100 per year, from '18 until '21, which are severely fire or foundation damaged. In each of these demolitions we'll seek to purchase the vacant lot from the owner or assist the city with foreclosure as need be. We will either seek redevelopment of the lot, invite an adjacent owner to purchase it, or lease that property for \$25 per year as a garden lot. Funding for the Omaha Land Bank came from three foundations originally, one corporation, and the city of Omaha in 2015. That funding continues to be in place, but is being reduced each year as the Omaha Land Bank works toward being self-sustained. Our goal is to be fully funded from investments in tax lien certificates, property sales, and tax recapture by 2020. By legislative authority the Omaha

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Municipal Land Bank receives 50 percent tax recapture for the first five years after a property is sold. On a typical east Omaha property, this brings in about \$600 per year in revenue per property. As an agency, a land bank could be used in each city in Nebraska. Current legislation would need to be amended to allow any city to pass an ordinance to form a land bank. Once formed, a city could combine their resources with other cities in their county by interlocal agreement. These cities could form a district land bank in the same groupings that are currently used by the Department of Economic Development. In that district format, cities with few distressed properties could work with others to build a sustaining inventory model across their district of perhaps 1,000 or more properties per district. The result would be housing, services, new jobs, transportation, and growth in our communities. I believe that the land bank is one the best new tools for economic development in Nebraska. Thank you for allowing me to testify. I have given you a packet of materials that gives you access to our Web site, a lot of the marketing items we use, and also our strategic plan. And I am more than happy to answer any questions that you might have, please. [LR138]

SENATOR WAYNE: Any questions from the committee? I guess I have one. What you can do, can a county already do? Or can a city already do? [LR138]

MARTY BARNHART: What we can do, a city and county can do in part. They can go out and obtain a property, either by eminent domain or purchase of that property. But they have difficulty in trying to sell the property. They really don't have a mechanism to be a sales agency. As a municipality, they are really there to inventory the property, to show the property. There really isn't anything in a planning department or any staff member that might be dedicated or really any means to bring property out to the public and show them what they might purchase, and of course to set a decent value upon that property. [LR138]

SENATOR WAYNE: But could they do that? [LR138]

MARTY BARNHART: They could. [LR138]

SENATOR WAYNE: And of the properties that you have, how many of them are in east Omaha?  
[LR138]

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MARTY BARNHART: The majority of what we have is in east Omaha, whether it be north or south. Of the 4,000 code enforcement properties, I would say 90 percent of those are in the east Omaha area. [LR138]

SENATOR WAYNE: And are those houses currently have people in them or are they not occupied? [LR138]

MARTY BARNHART: Of the 4,000, approximately half of those are vacant and abandoned. We have 2,500 alone that are in the northeast Omaha area. Those are vacant and abandoned. The remaining properties do have tenants or other individuals living in them, could be an owner occupant. [LR138]

SENATOR WAYNE: And of those 2,500 vacant or abandoned, are those company owned or owned by individuals? [LR138]

MARTY BARNHART: It's really a cross-section. OTOC, Omaha Together One Corporation (sic: Community), did an analysis of that and they found that approximately 60 percent were owner occupied, another 40 percent were corporate owned and used as tenancy properties in that direction. [LR138]

SENATOR WAYNE: So what kind of public process do you go through to acquire somebody's property? [LR138]

MARTY BARNHART: We always send them at least three letters, one per month over a three-month period, asking them if we might have the opportunity to tour the property with them, look at the property, negotiate a fair price for that property, and then seek to purchase it. [LR138]

SENATOR WAYNE: But do you talk to neighbors? [LR138]

MARTY BARNHART: We do. We talk to the neighbors, we also talk to the neighborhood association and ask them all if we might be able to do that. The information you see here really is also in forms that we put into a sign. And when we obtain a property in a neighborhood we

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begin to put these signs up so folks know that the opportunity for them to either sell a property or buy a property exists in their neighborhood. [LR138]

SENATOR WAYNE: And I'll just be direct. What my problem is, is that if the cities or counties or any political subdivision have the authority to use eminent domain but are too afraid to, I don't think we should pass it off to a different organization to not be as public. And the reason I say that is I went through one with OPS when we had to use eminent domain for the potentially new school. And it was very heated and very controversial, but that's what we get elected to do is make controversial and hard decisions that's best for our cities. And we've talked before off-line a couple of other times, so I just want to make sure the process is open and public and that oftentimes it could be great-grandma who is sick now and has been in the facility for two years, but the third neighbor down the street knows that and nobody else does. So if you're sending mail there, she'll never know or none of the family will ever know because everything else has been forwarded but we don't know why they're not getting it. So I just want to make sure it's open and public, and I think some of this falls back on our cities and counties to make tough decisions. So it's not really a question, but it was a statement. Any other questions? Go ahead, Senator Crawford. [LR138]

SENATOR CRAWFORD: Yeah, thank you. So when you are working with the city, sometimes you are purchasing the property, correct? [LR138]

MARTY BARNHART: Um-hum, correct. [LR138]

SENATOR CRAWFORD: And then other times you may be working with the city to assist with the foreclosure process or... [LR138]

MARTY BARNHART: Correct. [LR138]

SENATOR CRAWFORD: Right. You mentioned that the municipalities might each have their own land bank and then coordinate with an interlocal agreement for a regional land bank. Does that, given your experience, does that make more sense? Or does it make more sense for there to be a regional organization from the get-go? [LR138]

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MARTY BARNHART: Well, in talking to our legislative folks I've learned that it would be more difficult to rewrite the legislation districtwide than it would be to give the opportunity for a municipality to have a land bank. Much like the Land Reutilization Commission statute, which was passed in 1971, that statute originally allowed only Omaha to have an LRC or an LRA, as it was originally called. But it was amended to allow any city in the state to have an LRC or any county in the state to have an LRC and, therefore, they could have one. And by interlocal agreement they could go back and be able to work with each other, as you had talked about earlier, cross-pollinate when there was an attorney already doing this work or work with the municipality. In my thinking, it's going to be difficult for a smaller city to have a land bank on their own, whereas regionally they might be able to combine their forces and build a sustaining model across the state and, therefore, make it something very transparent, very public, as Senator Wayne was talking about, letting neighbors know, letting folks know. We have found, Senator Crawford, one of the best mechanisms we have is to put a sign in the yard of the house we're seeking to say, do you know this owner, and put a phone number there, because these people do know where this person might have moved to whether it be, as Senator Wayne said, off to a care center or a person that may have moved around the block to a different place that they are either renting now because this one timed out or something of that nature. So again, municipalities are the best way to go statutorily, rather than in a district fashion. It would be a simpler amendment to the statute, rather than a complete rewrite as I've learned. [LR138]

SENATOR CRAWFORD: Thank you. [LR138]

SENATOR WAYNE: See any other questions? Seeing none, thank you for coming today. [LR138]

MARTY BARNHART: Thank you so much. [LR138]

SENATOR WAYNE: Any other testifiers? [LR138]

DANA JELINEK: Good afternoon and welcome to Grand Island. I am Dana Jelinek. I'm the executive director for Grand Island area Habitat for Humanity. Dana is D-a-n-a, Jelinek, J-e-l-i-n-e-k. I have no handout for you and I have no written statement. So I'm coming at you as a

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nonprofit without some of the background that some of the other speakers have had, but I do want to echo what Senator Crawford had said. You do have a letter from Omaha Habitat, and a lot of what they outlined in their letter are things that we have also seen as far as clear title and absentee owners. For us in Grand Island, it has been increasingly difficult to get land on which to build. We have seen a lot of the problem properties continue to be problem properties. People who do want to sell, want to sell at the rate that they think that their house is worth, even though it is something that needs to be torn down. I just went to an auction last week where the home was valued at \$43,000 and you could fall through the floor. And this was a property that really did need to come down, and somebody purchased it who is not going to tear it down and they're going to put a Band-Aid on it. So this is going to be a problem property for a long time. If communities had means in which to acquire those properties and make sure that they were not going to continue to be problem properties, it would be beneficial for the whole community, but it would also be a mechanism for Habitat to acquire properties on which to build new homes. Omaha does do rehabilitation. We don't have the ability to do that here. We're a two-person office. We build five houses a year. We are working on our 94th home in Grand Island. But our processes have been slowed down because of our inability to acquire property on which to build. So what I see as an issue for us is that our barrier to continuing to build is just land issues. And whatever means that might be for this process to move forward would be beneficial for us. We have talked with our problem resolution team on a number of occasions and I think that there's just an inherent frustration when there's so much bureaucracy to be able to move forward on properties that people kind of become deflated and their momentum to do something different changes and they're not able to go forward with acquiring properties or getting things torn down because of legal problems, whether it's clear title or the absentee owners or whatever it might be. We just see that there is a need for some sort of change so that we can improve our communities and get some decent housing on the market. We have seen that deteriorated structures in neighborhoods, people will call us wanting us to purchase. It's not habitable, but people are living in there. People find a way to get into boarded properties and it creates health and safety issues, not just for the people that are going into those properties but also the neighborhood. So I don't know that you have any questions for me. For me, it's just pretty much a statement of the needs that we have as Habitat for Humanity affiliates trying to get people into affordable homes that they will own. Have any questions? [LR138]

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SENATOR WAYNE: Any questions? Seeing none, thank you. [LR138]

DANA JELINEK: Thank you. [LR138]

CLINT SCHUKEI: (Exhibit 7) Good afternoon. My name is Clint Schukei. I'm the city attorney in Norfolk. I've been involved with these things for the last 30 years. A couple of questions that were passed on to me to comment on, one was about condemnation, when the city does that, impacting ownership. You know, in a perfect world, it doesn't impact ownership at all because in a perfect world you're able to convince or get the property owner to tear down their property if it's become necessary that that's the case. And then if the city has...if that needs to be removed because of public expense, well, then maybe it does impact ownership, that's going to kind of depend, but always try to do that. In Norfolk there are a multitude of situations where there's properties that are torn down. When you talk about houses in particular, our code staff would say that they probably provide the impetus for 10 to 12 of those a year in addition to where somebody just sees an opportunity and makes way for that. We have also torn down commercial buildings, we tore down a hotel, all of those things. The real question about those for us has been: who pays for that? Is it the public that pays for that? Is it the property owner? The document that I handed out is one that I presented at the League of Municipalities annual meeting last week. I had somebody come up to me afterward, which was interesting because it was something that we have experienced as well, where there was a grant used at one point in time to acquire properties. It almost had a negative effect because people kept waiting for the next grant because they're saying, boy, we can cash in on this if we wait for the next grant. What has happened in Norfolk in regard to that? So the frequency depends upon the staff time, complaint driven like you've heard. The city of Norfolk has budgeted as much as \$120,000 a year in the budget for demolition of those properties. I think the current fiscal year, which is starting next week, has \$36,000 budgeted for it. There was information about the bank contact bill. That is not something that has been especially beneficial to us. We've had issues where we're able to find things, you know, as a practical matter. You'll sometimes find where you've got distressed property or property that's been turned over to mortgage companies, and our code officials will tell stories about situations where they get in touch with the people that are supposed to be in charge of maintaining them and this guy's got two guys in a company and all over the state he's got 800 properties that he's responsible for. So the maintenance obviously

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doesn't occur. So we haven't used a property registry. And the tax sale, the foreclosure process, you know, those things are really difficult. One of the things that has happened, we've seen things where we've had people go out and buy tax sale certificates on property that are assessed at \$80,000 but need to be torn down. And so that creates a couple of problems. One is if people don't go and do their own investigation. In addition to all of the things, one of the things I haven't heard here today is that if the city does acquire the house or whatever, the special assessments you're talking about, even if somebody gives it to you, there's no way to get rid of those taxes. So we've had property that was...should have been fall...you know, was falling down. And you acquire the property, you've still got \$6,000 of back taxes for it. So if the city buys that, they're basically paying 65 percent of that, which is the experience in Madison County; 65 percent of those taxes go to the school district. So they're paying the school district so they can use the city money to tear down the property. And some of the problems with that, what we've tried to do with that, if the code enforcement...one of the things the code enforcement staff does is they try to look at what the value of that property is, they try to communicate with the assessor. If they've issued a condemnation order, they communicate that to the assessor in hopes that the assessor can knock the value of that property down because people that aren't tearing down their property aren't going to object. They don't care if it's valued at \$80,000 or whatever because there's no personal liability for any of that. Some of those problems that you talk about, I think it's 77-1837 of the Nebraska Statutes says that if you buy a tax deed you can go to the treasurer and you can get a tax certificate. The tax certificate thing takes three years, two years on the redemption of the property taxes. One of the ones I want to show you in the information that I handed out, on the bottom of page 11 is a house. Many of our problems are caused by fire departments that respond too fast. If they would just let that house burn down, we wouldn't have to tear it down, right? (Laughter) They don't like that idea. But if you look at the bottom of page 11 of those handouts, that was a house that was fire damaged. Cost, \$10,000 was the...to take it down and to separate it from just the demo to utility separate it. The asbestos abatement, it's got slate siding on it. The asbestos abatement, they were out there on a 100-degree day taking that off. That was a little over \$5,000. That had real estate taxes that were \$2,000. The gentleman that owned that property got paid \$65,000 from the insurance company for that. There was no lien on it. He bought a pickup, a motorcycle, and drugs. And if the bills that Lynn would have talked about would have been in place, that's one that would have been done. The last thing I want to talk about, we talk about smaller communities. One of the things the city of Norfolk has done is gone

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out and has entered into interlocal agreements where to address some of those concerns the...we send our inspectors out to these other communities. They just hire an inspector that's certified and whatever. They go out and they become the bad guy that says this needs to be condemned and so on and so forth. And then the other thing that we do, we use the International Property Maintenance Code. We file violations in the county court. We fine people. They'll come in. They'll talk to the judge. Our judges are great. They'll say, hey, here is why I can't take that down. The judge actually engage with them: You're going to take that...when can you have it down? Well, I can have it down in 45 days. Okay. It's \$500 a shot. The judge would routinely say, I'm going to fine you \$500; if you tear it down in 45 days I'll give you \$450 credit against that fine. And then that goes up and up and up if it doesn't. So thank you for your time, happy to answer any questions you might have. [LR138]

SENATOR WAYNE: Any questions? Seeing none, thank you. Any other? These are my new makeshift signs here. [LR138]

JENNIFER TAYLOR: I don't intend to have you use either one of them. Good afternoon, Senator Wayne, members of the Urban Affairs Committee. My name is Jennifer Taylor, J-e-n-n-i-f-e-r T-a-y-l-o-r. I am an assistant city attorney for the city of Omaha. I don't have any prepared comments this morning or anything to hand out to you, but the city of Omaha and what we're doing has been raised a number of times this afternoon. So I thought I would first make myself available to any further questions the committee might have with regards to what the city of Omaha does with relation to abandoned and vacant properties and demolished homes. The comments I had intended to make, the city attorney from Norfolk did an excellent job of explaining why eminent domain is difficult, why foreclosure is difficult, why getting title of the property as a municipality is difficult. On the eminent domain piece, just briefly, we do use eminent domain in the city of Omaha. Again, it is correct that politically and the environment of using eminent domain to take someone's property for the benefit of the municipality is not a very popular thing to do. It does lead to arguments; it does lead to some public turmoil. We actually do it a fair amount in the city to further our CSO project. We have the federally mandated sewer separation that we have to do. We use eminent domain to acquire land needed to do the sewer separation project quite a bit. But that is not terribly controversial and we do that relatively routinely, because it is furthering a federal mandate. Beyond that, if we want to use eminent

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domain, for example, to acquire ownership or title to abandoned, vacant, nuisance properties, that is easier if it is a property that is within a designated redevelopment plan area, not just a CRA but an actual redevelopment plan that specifically designates this particular four- or five-block section as being intended to be acquired by the city for redevelopment purposes. In places where we have those kinds of redevelopment plans, it is relatively easy if we need to, if we can't acquire that property on our own, to acquire it through eminent domain. However, outside of those plan areas, then we have to go through the standard eminent domain process which requires us to not only negotiate with a property owner if you can find them, but also we have to designate a purpose, a public purpose for why we're acquiring the property. And that public purpose can't necessarily just be it's a nuisance to the neighborhood. We have to actually have a plan of something to do with it. We have to have a purpose for using that property. So that makes eminent domain an option, but it also makes it a challenge because then we either have to do widespread redevelopment plans across a whole section of the city of Omaha or we have to have one-off purposes for every single one of those properties, which we just don't have the time and staff and wherewithal to do that. So that makes that challenging. One of the things I am working on, as Marty Barnhart mentioned with the land bank, is an attempt to foreclose...or not foreclose, sorry, demolish more properties in the city of Omaha this year than we have in the past. Traditionally, we have demolished anywhere between 80 and 100 properties on an annual basis, but that costs us over \$1 million. Those are funds we do not recoup pretty much in any way, shape, or form. I have made some attempts where I can find a property owner with either assets or value that I can, through state statute, go directly after the property owner to recoup those demolition costs. Most of the time they're just assessed to the property as a lien. Unfortunately, what happens is you spend \$10,000 to \$15,000 tearing down a property, now you have a quarter-acre that is left, it's worth about \$500. So that \$500 vacant quarter-acre is now got subject to a \$10,000 to \$12,000 demolition lien, plus whatever tax liens are on it, plus whatever special assessment liens have been assessed to it for city mowing, plus whatever maybe mortgage or anything else that might be on it. Our demolition lien is junior in priority to all those tax liens and possibly mortgage liens or anything else. So even in the upcoming year, where we're working with the land bank to try and acquire some properties through foreclosure of our demolition liens, we still may acquire that property, but we may be behind \$5,000, \$10,000, \$20,000 of other liens. The one thing that Mr. Barnhart did not mention that is a benefit to the land bank is the land bank has the ability to wipe out liens, all but private certificate taxable

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liens. So we can, if the land bank is to acquire the property from say the municipality, they can wipe and clean and clear that title. That is a huge, huge tool the land bank can use. But the land bank can do that and they can do that in a way that we could not. We could, once we take ownership of the property, use eminent domain of our own property to clean and clear the title. But again, that's a process that we would have to go through. Judicially that takes time, resources, and funding that...and municipalities plead poverty, but a lot of times we don't have. So there are things that we are working on, but if we could have tools that would allow us access to property in a more expeditious fashion, that would allow us to get control of the property, to clean its title, and to move it back into productive use, those tools would be very beneficial. And beyond that, I'd be happy to answer any questions. [LR138]

SENATOR WAYNE: Any questions? Senator Crawford. [LR138]

SENATOR CRAWFORD: Thank you, Senator Wayne. And thank you, Jennifer, for being here to speak. So the land bank has a title, sort of a title-cleaning authority? [LR138]

JENNIFER TAYLOR: They do. There's within their statutes...Marty, what is that statute number? [LR138]

MARTY BARNHART: Our statute? [LR138]

JENNIFER TAYLOR: Yeah. [LR138]

MARTY BARNHART: (Statute) 19-5201 through 19-5218. [LR138]

JENNIFER TAYLOR: There you go. Within those statutes there is a provision that allows the land bank to, through resolution of the board, to clean, to remove any and all liens that are on the property once they acquire the ownership. [LR138]

SENATOR CRAWFORD: Could you imagine that being a municipal authority? [LR138]

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JENNIFER TAYLOR: I think it would have to depend on the types of...I think the issue...it's a tool the land bank has. The problem that we would have as a municipality is some...you know, those taxes go to both the city, the county, the school district, and I think there might be some leery concerns about whether or not we should have the authority to wipe those taxes off outside of the eminent domain process. [LR138]

SENATOR CRAWFORD: Thank you. [LR138]

SENATOR WAYNE: Any other questions? Seeing none, thank you. Any other? Last call for...not alcohol. Last call for anybody else testifying. I know everybody is ready to go watch the Husker game, but we'll get there sooner or later. All right, we'll now move to LR60 and we'll close the hearing on LR138. And we will now move to and open the hearing on LR60, an interim study to examine the issues related to the use of tax increment financing, TIF, that were raised in the December 2016 Auditor's report. I would note that the purpose of this study is specifically to look at the issues in the Auditor's report and ask testifiers, please, try to keep those remarks focused on those issues. For this hearing, we will have a brief introduction of the issues raised by the Auditor's report by committee legal counsel. Followed by that, we will have invited testimony by State Auditor...I was about to say State Senator Auditor, but former Senator State Auditor Charlie Janssen, as well as a number of municipalities whose TIF projects were examine by the Auditor's report. Followed by the invited testimony, we will receive public testimony. With that, counsel. [LR138]

TREVOR FITZGERALD: Good afternoon, Chairman Wayne and members of the Urban Affairs Committee. For the record, my name is Trevor Fitzgerald; that's T-r-e-v-o-r F-i-t-z-g-e-r-a-l-d. I'm introducing LR60 on behalf of the committee. The purpose of LR60...and I apologize to committee members for whom this testimony seems repetitive since we heard it before. The purpose of LR60 is to take a comprehensive look at the December 20, 2016, report that was issued by the Auditor of Public Accounts. That report was issued following the Auditor's review of 22 projects by Nebraska municipalities that utilized tax increment financing, or TIF. In conducting their review, the Auditor's Office initially selected 35 projects, but only conducted examinations on 22 of those 35 originally selected projects. As committee members no doubt recall, this past legislative session saw multiple TIF bills introduced, including three that were

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introduced to address various issues that were raised by the report. In addition to the Auditor's report itself, copies of those three bills are among the materials committee members have in their binders. One of these bills, Senator Groene's LB597, was indefinitely postponed by the committee; while the other two, Senator Crawford's LB95 and Senator Groene's LB489, were held by the committee. As part of the audit, each of the 22 TIF projects that were examined by the Auditor's Office was reviewed for compliance with 14 different criteria. Rather than review each of these criteria separately, both my testimony and the corresponding committee memo will break down the issues identified in the Auditor's report into six main categories. In cases where legislation was introduced to respond to those issues, I will mention that as well. The primary issue identified by the Auditor's report was poor recordkeeping, in some cases amounting to a complete lack of records retention for certain TIF projects. Recordkeeping issues of some form or another were identified in 16 of the 22 projects that were reviewed by the Auditor's Office. While there are not specific recordkeeping requirements in the Community Development Law, the Records Management Act governs records retention by local governments. Prior to 2009, the applicable records retention schedule for various records related to TIF only required municipalities to maintain records for between three and five years, depending on the type of record. Since TIF projects may last as long as 15 years, many records created prior to 2009 may not have been legally required to be maintained for the length of the TIF project at the time the project began. In 2009, the records retention schedule for city and village clerks was amended to require that any supporting document received or generated by the city or village that provides support for the receipts or payments associated with a TIF project be retained for three years following the end of the fiscal year in which the property taxes are divided. Because this language focuses on receipts and payments, however, it's unclear whether it might technically not apply to certain TIF-related documents, such as redevelopment plans, substandard and blighted studies, and cost-benefit analyses. This is not to say of course that there were not significant recordkeeping issues with the TIF projects that were included in the audit. Multiple projects that began after the records retention schedules were changed in 2009 still had recordkeeping issues. And in some instances, it appears that municipalities had failed to keep most records, relying on developers and their attorneys to keep some TIF records instead. One of the major changes that was proposed in LB95 last session was explicit statutory requirements that municipalities which use TIF retain copies of all redevelopment plans, substandard and blighted studies, cost-benefit analyses, and other supporting documents for a period of three

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years after the property taxes are no longer divided for TIF purposes. The second main issue identified by the Auditor's report deals with annual reporting through the Department of Revenue. Under current law, each municipality which has approved one or more TIF projects is required to provide an annual report to the property tax administrator with a short narrative of the project and basic information about the division of property taxes for the project. The Auditor's report found that the Department of Revenue has taken the position that the annual report is not required and that only amendments to the original TIF redevelopment plan not previously filed need be submitted after the initial report is filed. One of the changes that was also proposed in LB95 was to clarify that this annual report on TIF projects was actually required annually. The Auditor's report also found that 2 of 22 projects reviewed had inaccurate information listed on the Department of Revenue's TIF report, although the Auditor's Office did not determine whether it was the municipalities or the Department of Revenue who was responsible for the inaccuracies. The third main issue identified by the Auditor's report deals with cost reimbursement for TIF projects. In 6 of the 22 projects reviewed by the Auditor's Office, some issue related to cost reimbursement was identified, including cases where the developer incurred expenses prior to the approval of the redevelopment plan. Depending on the nature of those expenses, reimbursement of them could call into question whether the project meets the so-called "but for" test. As I've noted to the committee before, the words "but for" do not actually appear in statute. However, Section 18-2116 requires that prior to approving a redevelopment plan which utilizes TIF a municipality must find that: (i) the redevelopment project would not be economically feasible without the use of TIF; and (ii) the redevelopment project would not occur in the community redevelopment area without the use of TIF. Together, these two requirements are commonly referred to as the "but for" test. As proposed, LB95 would have prohibited the reimbursement of costs incurred prior to the approval of the redevelopment plan, with certain exceptions for things such as: costs related to the preparation of the redevelopment plan, the substandard and blighted study, or the cost-benefit analysis. The fourth main issue identified by the Auditor's report is the designation of areas as substandard and blighted. While many people often have an idea in their mind of what constitutes substandard and blighted property, it's important to note that substandard area and blighted area are both defined terms under the Community Development Law. These definitions, which can be found in Section 18-2103, were already in statute when Article VIII, Section 12, which authorized TIF, was passed by the voters in 1978. The only substantive change to these definition since TIF was enacted in 1979 was in

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1984, when the definition of blighted area was amended to add additional criteria and place a maximum limit on the area in a municipality that may be declared blighted. A substandard area is defined as an area in which there's "a predominance of buildings or improvements" with one of six factors or any combination thereof. Rather than read those factors, the list of factors can be found in your memo, as well as in the statutory language. Similarly, a blighted area is defined as an area due to the existence of certain factors or any combination of such factors that "substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations, or constitutes an economic or social liability, and is detrimental to the public health, safety, morals, or welfare in its present condition and use." The list of ten statutory factors for determining a blighted area can also be found in your memo and statutory language. In addition to the list of ten factors determining blighted area, the statutes require that at least one of the following conditions be present: one, unemployment in the designated area is at least 120 percent of the state or national average; two, the average age of the residential commercial units in the area is at least 40 years; three, more than half of the plotted and subdivided property in an area is unimproved land that's been within the city for 40 years and has remained unimproved during that time; four, the per capita income of the area is lower than the average per capita income of the city or village in which the area is designated; or five, the area has either stable or decreasing population based on the last two decennial censuses. The Auditor's report identified issues with substandard and blighted designations in 16 of the 22 projects that were reviewed. Some of the report's findings, however, appear to require more than what is actually included in the statutory definitions of substandard area and blighted area. For example, even though the definition of substandard area only requires a predominance of factors, and not necessarily a majority, the Auditor's report highlighted 12 projects because they showed less than 50 percent of structures were determined to be dilapidated or deteriorating. I would note that Black's Law Dictionary defines predominance as "something greater or superior in power and influence to others with which it is connected or compared." The Auditor's report highlight...I'm sorry. In addition, in those cases where the municipality was unable to provide a copy of a substandard and blighted study conducted for the project, the Auditor's report did appear to assume that, because documentation was provided, the area did not meet the statutory definitions. As proposed, LB95 would have required that municipalities conduct a study or analysis on whether the redevelopment project meets the definition of substandard and blighted, effectively codifying what most municipalities currently do, although I would note there are

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some municipalities that historically have not done substandard and blighted studies in all cases. The bill would have also required that copies of the studies or analyses be made available on the municipality's Web site or made available for public inspection at a designated location. The fifth main issue identified in the Auditor's report deals with the required cost-benefit analysis for TIF projects. Under Section 18-2113, municipalities are required to conduct a cost-benefit analysis for each redevelopment project whose redevelopment plan includes the use of TIF. While there's not a specific form of the cost-benefit analysis required, the statute does list five factors that municipalities should consider and analyze in developing their model. Cost-benefit analysis issues were identified in 8 of the 22 projects reviewed by the Auditor's Office. In most cases where cost-benefit analysis issues were identified, the reason appears to be that the municipality was unable to provide a copy of the cost-benefit analysis that was originally conducted. Finally, the Auditor's report identified a handful of other issues in 8 of the 22 projects that were reviewed by the Auditor's Office, some of which were unique to a single TIF project. For example, several municipalities' redevelopment agreements were missing required elements and several TIF projects had late or outstanding property tax payments. The committee memo specifically identified four of the unique issues that the committee may consider examining in greater detail. Municipalities for two of those four identified projects testified at the North Platte hearing and the other two plan to testify at our hearing in Lincoln next week, so I will not discuss those at this time. As noted in your memo, on July 10 Senator Wayne sent a letter to each municipality that had a TIF project included in the Auditor's report, requesting that they send a representative to testify at one of the committee's hearings on LR60. The committee has received confirmation from each of the 22 projects...or, sorry, each of the 22 municipalities whose TIF projects were actually audited of their intent to testify at one of the hearings. And nearly all of the municipalities whose TIF projects were initially identified by the Auditor's Office, but were not audited, plan to testify as well. Information on each of those municipalities and which hearing they plan to testify at can be found in the list of audited TIF projects document in your binders under tab 4, I believe. With that, I have reached the end of my slightly-briefer-than-last-time remarks and I would be happy to answer any questions the committee may have at this time. [LR60]

SENATOR HANSEN: Thank you, Trevor. Are there questions from the committee? All right, seeing none, we'll invite you back up. I'll be taking over until Senator Wayne returns. And just a

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reminder, we will begin with our invited testifiers (inaudible) for public comment. Our first invited testifier is State Senator Janssen...State Auditor Janssen. [LR60]

CHARLIE JANSSEN: Pay is better. Thank you, Chair, Vice Chairman, committee members. Thanks for having me today. My name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I am the state of Nebraska Auditor of Public Accounts. I'm here today with no written testimony, just had wanted to make myself available for this hearing and say how much I appreciate you guys conducting these hearings. And first off, as an individual and a private citizen of Nebraska, I am and always have been a fan of TIF and TIF projects in my hometown of Fremont in the past and some future ones that they're looking at. So but that's not the hat I'm wearing today, I'm wearing the hat of the Auditor. And the Auditor's Office really looked at this in an extreme, which we do in everything, an extremely neutral capacity, not for or against TIF, just to give the...the objective was to give you and the whole Legislature ideas of how TIF is working and if it works the way...if that's the way it's supposed to work, then it's working. But if there's tweaks to it, certainly I could opine about that. But in this case, I think there could be, however, that would be entirely up to you. So the Auditor's Office has no for or against opinion on that. Now where the Auditor's Office does have an opinion is where it comes to recordkeeping, and I was happy to hear legal counsel expand, I guess, retract but expand on his last testimony to include that records indeed are supposed to be kept for TIF projects. Now, there...and we do...and I will have somebody come behind that will actually expand even on legal counsel's definitions of that, whereas, and he spoke correctly that it's not necessarily in the statute, but it was a little bit...I was taken a little bit back from hearing reports from the last hearing that some testifiers said, well, we really don't have to keep records. And I wanted to clear the record on that and make the record straight on that. And even if you didn't have to...I'm a private businessman as well. You're all for the most part elected officials, work in government. If anybody came to you in your private life, business life, political life and said, I want to give you legal advice or financial advice on a multimillion-dollar project and, guess what, we're not going to keep records for it because we don't have to, I have to think, knowing most of you, knowing all of you, that you would probably say, well, that doesn't sound like the right thing to do. And if there is any case to be made for that, I would implore that there...to make it even clearer with legislation to make sure that these projects because I do think they're important and the taxpayers deserve the trust of the people that are putting these projects forward. And they're 15-year projects many times. And

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these municipalities, I can tell you from my time at Fremont, the people that are in charge of this, it changes. And it's not easy to keep track of all this stuff, and it's, you know, one person's intellectual capacity. When they walk out of the door, for the most part, it's not retained. So it is very difficult. And we've seen it not only in TIF projects, but when we go to these municipalities it's...oftentimes, it's lack of segregation of controls. And we note that, but we understand that because there's very...there's not enough people that are working there. The city, county, sometimes village budgets don't afford for that oversight. And there's several programs that say we as, well, elected officials push down on these local communities and say, okay, now you administer this. Then they have legal counsel come in and they say, well, don't worry about it, we'll keep your records. Well, that didn't. We've seen where that has not happened firsthand. And I'm not singling anybody out, but there has to probably be controls in there because I think TIF is a great tool and it could be even better and it just needs to...you know, I do sit on the State Records Board, so I will be bringing this up at our next meeting. But it has been brought up, and maybe somebody is going to come behind me and say that, well, no, you really don't have to keep records. Patently, at least publicly, that's wrong. Even if that's true, the first bill in next year should be that we keep public records of multimillion-dollar municipal projects that are going to last over a 15-year period; and we keep very specific records because we know that many times the municipal staff are...they're overworked. They're doing several different things. They're in charge of recreational programs. They're in charge of a TIF program. They're in charge of helping with bond issues...not helping but navigating through issues like that. So it's not easy, and we get that. And we work with municipalities on all issues understanding that when we go in there. And a lot of times, and I'm happy to say, that a lot of times what we see is just sometimes people don't have the proper knowledge of all the programs. And I know that through the different organizations they work quite often with whatever specific organizations work with the municipalities and the counties. They do a good job outreaching to our office to get us to come in. Now we've got to get people to come to these conferences. And we've all been to conferences and sometimes we always don't take away from the conference what we need. So I guess that's really what I wanted to say is that if there is some sort of a loophole that I'm not aware of about not keeping records or if somebody is giving legal advice or financial advice that you don't have to keep records, I hope that stops today. And if it's out there, I hope there is a bill out next year that would change that. That's all I have. [LR60]

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SENATOR HANSEN: Great. Well, thank you. Are there questions for Auditor Janssen? Seeing none, thank you for joining us here today. [LR60]

CHARLIE JANSSEN: Thank you. See, if you get rid of Justin, there's not as many questions. (Laughter) [LR60]

SENATOR HANSEN: You timed that perfect (inaudible). [LR60]

CHARLIE JANSSEN: I heard him stepping in. [LR60]

SENATOR WAYNE: I do have a question for Charlie Janssen. No, I'm joking. [LR60]

CHARLIE JANSSEN: Too late. [LR60]

CRAIG KUBICEK: My name is Craig Kubicek, C-r-a-i-g K-u-b-i-c-e-k, and I'm an assistant deputy with the Nebraska State Auditor's Office. And I just wanted to expand a little bit on what the Auditor said. And Trevor's opening just kind of did a good summary of the issues that we had, but just kind of go over some of the additional points on some other audits that we have looked at. So like Trevor mentioned, we initially started out with 35 projects to test. That was dwindled down to 22 spread across 13 counties in Nebraska. In those cases, even the ones that dwindled down, we had to make multiple requests for documentation. Whether the documentation existed or not, a lot of the documentation had to be obtained from the developer, or the city didn't have those. You know, some of those requests coming back and forth were, oh, we'll get our developer to send that in. So even in the cases where we did have documentation or receive documentation, that documentation was coming from the developer, not from the municipality in those cases. So I just wanted to kind of shed a little bit of light on that, that even though we got the documentation, it might or might not have been from the municipality itself. So based on our testing of 14 attributes, we had some areas where we thought the Legislature should consider. And those were just some kind of unique situations, and I have kind of explained those before. But, you know, TIF money is used to reimburse expenses that already happened and have occurred and were going to occur, no matter if the TIF project was going to happen or not. And then we noted one city that used TIF for wall panels, sun shades, stair

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towers, painting, heat pumps, building enhancements; and when questioned under what authority, they used the other improvements in accordance with the redevelopment plan which kind of leaves that wide open. You know, if you say other improvements in accordance, well, as long as it's in the plan basically it's going to be approved because, you know, you can fit a lot of stuff into those words. I'm not going to go into the details. Trevor did a good job on those. So I'm just going to go through kind of our recommendations to the municipalities and then to the Legislature. Our recommendations to municipalities were: respond to the APA's request timely. We, like I said, mentioned at the last hearing we have put legislation in to help with that and help our office get timely responses on the questions or requests for documentation that we're doing. Ensure project costs are adequately documented: I think, like the Auditor just mentioned, you don't know unless the documentation exists. Like I mentioned before, sometimes the documentation we got was not signed. So is this the actual documentation that was approved by the board or by whoever if it's not the actual signed document? We're just getting an unsigned document. Is this the official document? So kind of to build upon that, when you're keeping the documentation, keep the originals, keep the signed documents. Ensure ad valorem taxes are distributed, received, and paid, or accurate, we had some issues with that, that, you know, they were withholding 10 percent or creating a revolving loan fund, is that correct, yes or no, so that we just expand on that; and then obtain a general understanding of the Community Development Law prior to moving forward with TIF projects. I think there was a lot of times where attorneys came in, explained, okay, this is what we're going to do. They leave town and then we're asking questions. We're like, well, we don't really know. You know, we'll have to get with them to answer your questions. I didn't really have...and it wasn't, you know, like specific hard questions. It was kind of more generic questions that you would hope that, you know, those type of individuals would know. And then to expand on that, we had options for the Legislature to consider: analyze whether the Community Development Law is being utilized as intended; review current TIF requirements and the wording of such laws; and then the creation of a potential committee or separate authority to monitor compliance. And like I mentioned at the last hearing, we also have done a subsequent review of one of the cities and noted additional issues or similar issues to what we saw in the review of the 22: just no documentation to support. I have been in contact with that city since, because we're doing their audit coming up. And they've been working with the developer and others to get that documentation, and the attorney, but that

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documentation didn't exist when we first went. So with that, I'll open to any questions. If not, I'll turn over to Russ Karpisek for additional testimony. Any questions? Thank you. [LR60]

SENATOR WAYNE: Russ, you have 15 seconds left of the combined four minutes. (Laughter)  
[LR60]

RUSS KARPISEK: (Exhibits 8-10) I talk kind of slow, Senator. Thank you, Senator Wayne and members of the Urban Affairs Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I am the legislative liaison for the Auditor of Public Accounts. I will try to be quick, because we all want to go watch the Huskers and/or high school football. If they would only put out a schedule when we'd know when this stuff is, right? Oh, they do. For full disclosure, I was the mayor of a small town for 12 years, state senator for 8 years, 2 of which was on this committee; and I am currently a Saline County commissioner, so I've been on all sides of this issue for quite some time. As the Auditor stated, our office is not opposed to TIF, but was asked by numerous senators to do an audit on some TIF projects around the state. We wrote letters to every senator, asking if they had a project in their district that they would like us to audit. We started with a list of 35, and after waiting for far too long for them to all to comply with the records requests, we looked at 22. These were not all requested by senators, but we tried to get a variety of projects from across the state. My main testimony today is really based on the things I heard in North Platte, mainly that recordkeeping is not a TIF statute, but that our office did point out many times that recordkeeping was not done well or at all in the report. I would like to bring to your attention State Statute 84-1201, legislative intent (2), that states: "Records containing information essential to the operations of government, and to the protection of the rights and interests of persons, must be safeguarded against the destructive effects of all forms of disaster and must be available as needed. It is necessary to adopt special provisions for the selection and preservation of essential state and local records, thereby insuring the protection and availability of such information." Now, that comes from the State Records Board, but I think it's pretty clear it says you're supposed to keep records. I would also like to bring State Statute 18-2101.01(7) (sic: 18-2102.01(7)): "A permanent record shall be kept by the authority of all warrants, orders, or requisitions so drawn, showing the date, amount, consideration, and to whom payable. When paid, the same shall be canceled and kept on file by the city treasurer. The books of any authority established under this section shall from time to time be audited upon the

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order of the governing body of the municipality in such manner as it may direct, and all books and records of the authority shall at all times be open to public inspection." I would also next like to point out again in this handout State Statute 84-1203, which is entitled "Secretary of State; State Records Administrator; duties." This statute talks about how state and local records shall be kept, which brings us to Schedule 28 of the Nebraska Records Management Division, dealing with city and village treasurers; which was published on December 11, 2009. As Trevor said, this was a change, and I understand that some of these projects were started before then. But again, I'm trying to point out that records should be kept. In this schedule, Line 28-7-9 is entitled "Tax Increment Financing (TIF) Projects." And it reads, "Any supporting document received or generated by the city or village that provides support for the receipts or payments associated with a tax increment financing project. This may include invoices, reports, claims, contracts, etc.," and they are to be disposed of "after 3 years following the end of the fiscal year in which the last ad valorem tax is collected," as, again, Trevor stated. As these statutes and schedules show, there are many places that talk about keeping records. Our mission in the Auditor's Office is to show the Legislature how things are working in the real world from what statute allows. If this is how the Legislature envisions that TIF should be working, that is fine with us, and as the Auditor said. If not, we have pointed out a few places that legislation could be introduced to make things more clear. I think that is what needs to be the focus here, not on how the Auditor's Office prepared the report, even though this is a hearing on the report. I don't think we're grading the report. I think we're supposed to be grading TIF projects. I'd be glad to try to answer any questions from the committee, and thank you very much for your time. [LR60]

SENATOR WAYNE: Any questions? Senator Crawford. [LR60]

SENATOR CRAWFORD: So as I understand it, you're just demonstrating evidence in the...about the importance of keeping records. I think one of the...but it is true that the tax increment financing recordkeeping policy was changed and so some of those projects that were audited were projects that would not have been subject to the new time frame? I mean, the one thing is keeping records and the second question is how long you keep those records. [LR60]

RUSS KARPSEK: Senator Crawford, I agree. But I think if you go back in statute, that was in the Schedule 28. The other things have been in statute about recordkeeping. I just think it's a

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false flag that was brought up to take the spotlight off of these TIF projects and what's going on with them and say, well, the Auditor looked at all these...talked about the records keeping and that's not even in statute. That's what I'm saying. And that's how we do all of our audits, by going back and looking at statute. And I just want to point out that I don't think that it's true that there should not have been records kept, even if it was before '09 and even if it was before that started. [LR60]

SENATOR CRAWFORD: Correct. I think the overview of the kinds of difficulties found in the projects I think is part of the what the summary was doing, is noting that this was a common concern. And how it was dealt with in terms of the Auditor's report I think is fair for us to consider as we look at the report and think about how we're dealing with the concerns that are in the report. [LR60]

RUSS KARPISEK: And that's what I want to say, is let's look at the concerns in the report. [LR60]

SENATOR WAYNE: Any other? I mean, I would say that in 2009 when it was changed, even if you didn't have the beginning documentation, from 2009 forward you should at least have been keeping receipts and whatever transactions occurred because it was state statute; nor do I think it's a good argument to say that because it's not in TIF statute we didn't know, because as a school board member when I was on a school board, there's multiple things that are not in metropolitan city class...metropolitan class school board or a Class V school district that we still have to follow in other sections. And so you look at all the sections and figure out what you're supposed to do. So I think nobody is arguing that. I agree. I appreciate you pointing out the issues and I think what we also heard in North Platte is that recordkeeping is a priority for those cities and villages and they'll do a better job. And I thank, again, I thank the Auditor's Office for highlighting that and helping them do better with public tax dollars. So with that... [LR60]

RUSS KARPISEK: Thank you, Senators. [LR60]

SENATOR WAYNE: ...we will move to city of Grand Island, Marlan Ferguson. And remember, we have a 30-second sign and a red sign, even though they're both written in blue. [LR60]

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MARLAN FERGUSON: Okay. I'll take 30 seconds. (Laughter) Thank you all. My name is Marlan Ferguson, M-a-r-l-a-n F-e-r-g-u-s-o-n, and I just want to welcome you again to Grand Island. As you recall, if you recall Chad Nabity, the planning director for the city of Grand Island, testified in North Platte. And he was going to be gone this week so I got the duty to be here today. And I hope you enjoyed the tour. I think that you got to see some of the projects that Grand Island has been involved with. We did...we were asked to submit a project, which we did. It was not audited, but I think Mr. Nabity did talk about some projects in North Platte. So I just want to say thank you for coming out to Grand Island, come out-state to hold these hearings. And on behalf of the University of Nebraska Cornhuskers that are going to be playing here in a little bit, I'll close my testimony. [LR60]

SENATOR WAYNE: Any questions? Thank you for your time and thank you for the tour. [LR60]

MARLAN FERGUSON: Thank you. [LR60]

SENATOR WAYNE: Next we'll have Randy Chick from city of Hastings. [LR60]

RANDAL CHICK: (Exhibit 11) Good afternoon, Senators and staff members. My name is Randal Chick, R-a-n-d-a-l C-h-i-c-k, and I'm the director of the Community Redevelopment Authority in Hastings, Nebraska. You know, one of the great things about living in Adams County, good or bad, we show up at the top of all the legislative reports. A little background, the Hastings CRA was established in 1987, has been working with Community Development Law for 30-plus years. During that time, the CRA has had five different attorneys advising the authority, doing their best to make sure we're complying with statutes. Over that term, the CRA has had approximately 20 different board members, which not very much turnover. Of those, 13 have served as city council members or mayor. Three of our current members served on the council at some point in time, and another member was a council member in Lexington prior to relocation to Hastings. My point is these folks know what it means to serve their community, they know local politics, they have a good grasp on community needs and concerns, and they know how important it is to follow ordinances and statutes. I'm here today to identify...excuse me, to discuss the identified problems or findings that the Auditor had. In Hastings, the project,

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we had three. First of all, we're firm believers in keeping records, and all five of our attorneys have been adamant about trying to keep those records. And the report actually brings out obviously some weaknesses that we had and obviously we're going to have to make some adjustments to how long we're keeping some things and in how many files we're keeping them-- my file, the attorney's file, the previous attorney's file. And so keeping a master file is going to have to be important, and have that kept at the city. So we had three items: expenditures traced to supporting documents. So as reported, the CRA had several items of concern, including an unsigned closing statement from 1995, which we were eventually able to locate a signed copy. We had some individual invoices from the city of Hastings landfill from 1998, which we eventually located a daily ticket report. We never could find the invoices. And we did not provide the Auditor with a cost certification, which we were not aware was a requirement. But we can make that adjustment as well. Corrective action would include retaining all signed documents, invoices, and other supporting documentation in one master file, and including language in the redevelopment contract requiring the developer to provide and retain the same for the term of the contract. Obviously, the 2009 legislation asked that we keep that for an additional three years after the term, and we would certainly comply with that. Another item was the required public notice. As reported, we were not able to provide proof of a publication from 1987 for the public notice to declare the area blighted and substandard. All our notices are generated from the city clerk's office, and corrective action would include keeping a copy of that public notice in our master file now that we know we may need it 30 years later. Another item was property tax payments being current. On our project, the second half of the 2015 property taxes were paid late with interest. And just a comment, all parties to TIF agreements want to see taxes paid on time, especially the holder of the TIF debt. All of our redevelopment contracts require that real estate taxes be paid on time. Having said that, I'm not sure what we do when someone does not pay their taxes on time, other than charge them the 14 percent interest that they're supposed to be paying. But the last item, the auditors had some concerns on the blighted and substandard issue, and the Auditor's report mentions that the city did not have a copy of the blight and substandard study used in that determination for area number 1, which the project was located in. I'm not sure anyone knew what a blight and substandard study was in 1987. We searched everywhere for a study or other documentation and we were not able to locate it. If our city attorney was here today, this is where he would point out that nothing in statute says that the blight study be done. Having said that, in 1992 we started doing blight studies. And on the 13 other areas that we have

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in our community that have been declared blighted and substandard we have studies on all of those. As corrective action, the CRA contracted with Marvin Planning Consultants to conduct a study for the area, and by November of this year the council should be adopting the study for said redevelopment area 1. At a cost of approximately \$16,000, the study did show the average age of the structures in the area to be 90 years old. My assumption is if the area meets the criteria of blight and substandard in 2017, hopefully it met the requirements 30 years ago. In summary, here's what I know: that as a city of 25,000 residents 15 miles off I-80, it takes an all-out effort to stay even with most of the communities our size or to experience even slight growth. There are not many tools available for communities like ours to develop or redevelop areas of our town that have specific needs. The city of Hastings has completed 65-plus TIF projects that have added 400-plus housing units and close to \$70 million of increased valuation. And without TIF, I cannot imagine where our city would be today. So as you review potential changes to Community Development Law, please be aware of the potential negative impacts on communities across the state that are utilizing this beneficial tool to grow their towns. Thank you for the opportunity to address the Auditor's concerns, and I would be happy to try and answer any questions. [LR60]

SENATOR WAYNE: Thank you. Any questions? Thank you very much. Next we have Dave Rippe from the city of Hastings. [LR60]

DAVE RIPPE: (Exhibit 12) Senator Wayne and members of the Urban Affairs Committee, thank you for the opportunity to address your committee this afternoon. My name is Dave Rippe, D-a-v-e R-i-p-p-e, and I'm the executive director of the Hastings Economic Development Corporation, today representing our corporation and community. Speaking in general terms, the primary issue inhibiting private investment into commercial and residential development in rural Nebraska is a generally realized rate of return that doesn't justify assuming a level of risk that is too great and a term of payback that is too long. Most, if not all, real estate and development projects are essentially a math equation. That being said, the result is so much more. With full appreciation of the efforts and the work of the State Auditor's Office, we don't have to look at these types of projects through the same lens with which they do. I don't have to...I don't see missing public notices or the other things that Randy mentioned with our files; what I get to see are individuals, companies, and communities building places where people want to live and

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where people want to work. We see economic vibrancy and growth for our state, job creation, entrepreneurship, housing, downtown redevelopment, and value-added agricultural endeavors that strengthen the ties between our business and agricultural communities. We don't see a program that favors big companies, big cities, or a certain geographical portion of our state that happens to be east of us. We don't see cumbersome tax incentive programs that can't seem to get out of their own way. We see a program that's equally accessible to all of us, big and small, rural and urban, and a program that's built to help communities help themselves where each deems appropriate. At a time when most of us are sitting here asking why our rural communities are losing population, why we have more available jobs than available people, and how we grapple with property taxes, we should be asking how we make our communities and our state a more desirable place to live, how we grow the tax base so that we can sustainably relieve property taxes while creating places where people want to be. The only way to do that is by investing in ourselves. I've detailed in my written testimony several TIF projects that have occurred in Hastings over the last seven years. Most of these properties realized a four- to fivefold increase in taxable valuation, which long-term equates to sustainable property tax relief. But again, it's so much more than the math. These projects are single-family downtown homes, short-term stay corporate units for traveling professionals and medical personnel in our community, cool loft apartments for young professionals, bakeries, breweries, restaurants and coffee shops and more. They are homes to the exact types of businesses and individuals that we long to see in rural Nebraska. I appreciate the due diligence that this committee is doing of this very valuable program, and appreciate your efforts in this upcoming legislative session to see how we can make this a very workable program for our communities, our governments, and our private sectors going forward. So thank you again very much for your efforts, and appreciate your time. [LR60]

SENATOR WAYNE: Any questions? Seeing none, thank you. [LR60]

DAVE RIPPE: Thanks. [LR60]

SENATOR WAYNE: Next we'll have Wendy Wessel (sic)... [LR60]

\_\_\_\_\_: Wendell. [LR60]

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SENATOR WAYNE: ...Wendell Wessels. Sorry, Wendy...I didn't mean to say Wendy. Wendell. Sorry. [LR60]

WENDELL WESSELS: (Exhibits 13-18) Oh, that's okay. Good afternoon, Chairperson Wayne and members of the Urban Affairs Committee. My name is Wendell Wessels, W-e-n-d-e-l-l W-e-s-s-e-l-s. I am the finance director for the city of Kearney and the treasurer of the city of Kearney Community Redevelopment Authority. I'm here to represent the authority and respond to the Auditor of Public Accounts report dated December 20, 2016, regarding the use of tax increment financing. As you know, 35 projects were selected for examination by the APA, including the Buckle project and the Younes Conference Center Project, both located in Kearney. The Buckle project had four findings and the Younes Conference Center had five findings. I will respond to those findings. For the Buckle project, the TIF revenues paid to the Buckle were not accurate. The CRA's 2010 tax calculation did not include the gross tax excess; it used the net excess. As a result, the tax credit amount, \$1,440, was not properly distributed. Our response is the APA is correct and the authority owes the Buckle \$1,283. The amount was missed in the first payment, since it was not included in the tax receipt provided by the Buckle to the authority. The tax receipt provided by the Buckle simply showed the taxes paid without the state property tax credit included. The authority's treasurer now checks every payment made by every redeveloper with detailed monthly reports provided by the Buffalo County Treasurer to make sure that the correct tax payment is used when calculating TIF rebates. The Buckle has been paid the \$1,289. Finding number two for the Buckle: A blighted designation must include one of five specifically stated conditions, including whether the average age of the units is at least 40 years old. The blight and substandard study for this project indicated the average age of the residential structures was 30.1 years of age. None of the other four requirements were addressed, so the study failed to meet this specific provision of statute to receive the blighted designation. The authority's response: The APA is correct in that the study indicated the average age of the residential structures for real and personal property was 30.1 years; however, when 115 mobile homes, which are personal property, are removed from the calculation, the average age of the remaining 14 structures is 41 years. This finding has been forwarded to the study's author for consideration and future blight and substandard determination studies. I'm thinking what happened there was that the 30.1 was a typo and they should have put in the 41 years of age. Finding number three: State statute requires a redevelopment plan to include certain factors. This project failed to meet several requirements

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included in the statute, including a failure to include information stating the standards of population densities, land coverage, and building intensities after development, a site planned, and a statement of kind and number of additional public facilities. Authority's response is: This finding was forwarded to the study's author. The study's author responded to the finding on July 13, 2016. The response detailed the location of these requirements in the study, and then the response from the study's author was provided to the APA that same month, in July of 2016. The final finding for the Buckle: State statute requires a cost-benefit analysis to be conducted. A cost-benefit analysis was not provided for this project. The authority's response: Staff was unable to locate the cost-benefit analysis for this project. All future projects will have a cost-benefit analysis completed pursuant to Section 18-2113. The Younes Conference Center had five findings by the APA. The first finding was that projected costs of this project were \$1,290,183. Documentation was not maintained to support the cost of this project. The authority's response: The redevelopment contract for this project required the redeveloper to provide a project cost certification prepared by a CPA. Documentation supporting the project cost certification was not required by the authority for this project. Although not required by statute, all current and future redevelopment contracts require redevelopers to maintain records of all documents evidencing project costs incurred. This means receipts, signed contracts, invoices, canceled checks, and other forms of evidence of payment for a period of 20 years after the effective date of the agreement. For all future projects, the authority will require copies of these records prior to making any TIF rebates to the redeveloper. The city received documentation to support the cost of the project from the Younes Conference Center in December 2016, which were forwarded to the APA in December 2016. However, this submission was not received by the APA in time for consideration for their report. The second finding for the Younes Conference Center was that TIF revenues paid to the Younes Conference Center were not accurate tax payments from 2001 that were for 2010 taxes were missed. The developer is owed \$9,871. The authority's response: The APA is correct and the authority owes the Younes Conference Center \$9,871. This amount was missed in the first payment, since a property tax receipt was not provided by the Younes Conference Center to the authority. The authority's treasurer now checks every tax payment made by every redeveloper, with monthly detailed reports provided by the Buffalo County Treasurer, to make sure that the correct tax payment is used when calculating TIF rebates.

[LR60]

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SENATOR WAYNE: You have about 30 seconds left. [LR60]

WENDELL WESSELS: Okay. Items three and four of the five findings for the Younes Conference Center are the same as three and four for the Buckle, so I'm not going to repeat those. The fifth one has to do with public hearing notice on the redevelopment plan for the Younes Conference Center. There was a public notice in the paper for the blight and substandard study. We had the hearing the same night for the redevelopment plan as we did the blight and substandard study, but the hearing notice didn't mention the redevelopment plan, it just mentioned the blight and substandard study. So we've taken corrective action on that and that won't happen again. Finally, the authority takes the findings of the APA regarding Kearney projects very seriously. The responses by the authority just discussed will improve recordkeeping requirements related to TIF projects, ensure that cost-benefit analysis requirements are met, improve blight and substandard studies, improve redevelopment plans, and correct public hearing notice requirements. Thank you to the members of the Urban Affairs Committee for allowing me to testify. If you have any questions, I would be happy to try and answer them. [LR60]

SENATOR WAYNE: Any questions from the committee? Seeing none, thank you for coming today. Jon Abegglen, city of Kearney, you're next. [LR60]

JON ABEGGLEN: Good afternoon, Senator Wayne, committee. Thank you for giving us the opportunity to speak today. My name is Jon Abegglen, it's J-o-n, last name is Abegglen, A-b-e-g-g-l-e-n. Excuse me. I'm the chairman of the Community Redevelopment Authority for the city of Kearney, been a member of the board for over 15 years, and I've been a resident of Kearney for 40 years. During my time on the board, we've seen several changes to state statutes that govern redevelopment authorities in our state. These changes, for the most part, make sense, been positive for accountability to the citizens and the communities that use tax increment financing. The granting of TIF through redevelopment authorities needs to be done in a responsible matter, yet provide support and incentives to develop and redevelop areas of our community that have not been developed for various reasons. I only speak for the city of Kearney's redevelopment authority, but I can tell you that I think we have been very responsible in the use of tax increment financing and always consider the ancillary impacts of granting TIF but also look at how we

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might use TIF to stimulate development and growth in areas of our community that struggle to develop, how the use of TIF can expand all tax-based revenue sources for our community. The decision of the use of TIF in the community needs to be left in the hands of the community. A couple of key points that I'd like to make to the committee in terms of how Kearney views, uses, and underwrites TIF requests, first and foremost, keep communication open with other taxing authorities, especially the school system. We know of no current concern or past concern that the school system has had with the process and use of TIF in the city of Kearney. The practice...as a practice, the CRA in Kearney does not grant 100 percent of the available TIF on projects to developers. Typically we use 60 to 85 percent in terms of what we grant to projects. The CRA believes it is important to pass on some of these benefits of the expanded tax base generated by the project to the other taxing authorities. Our TIF benefits are not bonded. The money is not given to the developer up-front; it's on a pay-as-you-go basis. That's a little bit different than what a lot of communities do. As a developer pays his real estate taxes, the amount granted under the TIF contract is then rebated to the developer by the CRA. Kearney CRA does not have a project size limit or threshold that developers need to meet to utilize TIF. In the redevelopment areas we have approved projects as low in terms of development costs as \$150,000 and projects in the millions. We believe that redevelopment and redevelopment areas should vary in size and scope. The CRA needs to be ready to assist the projects that will help the redevelopment plan for the blighted area. The Kearney CRA board has also started a discussion to review and evaluate current redevelopment areas in the city of Kearney and to see if it's perhaps time to deblight them. In other words, the TIF benefits and monies that have flowed into that area have done their work and now the area will probably, and we feel probably, continue to develop on its own. The use of TIF on the projects that were discussed today by Wendell has had, and will continue to have, a positive effect on these redevelopment areas. The use of TIF in these areas was primarily used for street, sewer, and water infrastructure that will benefit other development projects that will occur in these areas. Many of our blighted areas are contained in the city's infrastructure master plan. Use of TIF for public infrastructure benefits directly and indirectly many blighted and underserved areas in our city. Wendell talked about the Buckle project. The Buckle warehouse and distribution center, for example, was a project that the city saved from leaving our community and state. They were going to move the distribution center to Kansas City, and because we could provide them with a suitable location they decided to keep it in Kearney. Kearney and the state have benefited by having this project in our state and community. The

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utility and infrastructure cost to serve this site that they chose had barriers to development. The fact that this site was in a redevelopment area allowed the city and the CRA to assist with federal grants and TIF financing for infrastructure and site preparation. As a result, infrastructure and utilities are now available to other users that might want to build in this area, and they have. This area is home to the new Central Community College campus; a new for-profit regional hospital and clinic, and they did not receive any TIF and they do pay real estate taxes; the new Kearney high school; and then plans for a new skilled nursing and senior living facility have been approved. All have positive impacts on jobs, both private and public. In conclusion, many of the items outlined today by the State Auditor's report on the Kearney projects are minor documentation errors. Regardless, measures have been taken to correct them and new processes implemented. Attached with our testimony you will find a copy of our updated TIF application, cost-benefit analysis, and TIF agreement. We look forward to any additional discussions that may take place to improve our process. Most importantly is to understand that at the local level we can properly manage and use redevelopment tools to better our community. That concludes my comments, and thank you, Senator Wayne and the committee. [LR60]

SENATOR WAYNE: Thank you. Any questions? Seeing none, thank you. Ms. Nikki Schwanz, city of O'Neill. [LR60]

NIKKI SCHWANZ: Good afternoon. I'd like to say thank you to Senator Wayne and the committee members for inviting me to be here today. I wanted just to talk with you a little bit about some of the findings on the testing of our Garden Fresh Vegetables TIF project. And actually, the original developer for that project is here, that will be voluntarily testifying after me. One of the findings was invoices were not maintained by the city at the time of the project. We did get project cost data provided as part of the request for TIF. It was not...we did not think that it was a current practice to keep all of the individual expenditures at that time. I was able to get those from the previous developer and we submitted those to the state. Another concern was that eventually the TIF funding...that the bond would need to be adjusted because the TIF funding would be paid off before the term expired. And every year all of our projects are monitored with an amortization table that's adjusted after actual payments are made from the county treasurer or payments are received. I also, for accountability measures, have a CPA firm in the city of O'Neill, and they annually look over the projects just for that accountability purpose. If the

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amount of the project cost is collected before the term of the bond, the county assessor and county treasurer are notified in writing that the tax increment financing is complete for that project and that the division of taxes is released on the legal description in the bond. We have several examples of that that have happened. The last finding was that the blight study did not document that the average age of structures was in excess of 40 years; rather, it indicated that over 66 percent of the structures were over 40 years old. Based on this information, there was not adequate information to document that the area was blighted. The blight study survey results actually indicated that 210 primary structures and 151 out-building structures were constructed over 20 years ago. Of this total, 169 primary structures and 110 out-building structures were constructed over 40 years ago. In this analysis area, a total of 279 structures out of the 419 total structures, or 66.8 percent, are over 40 years old. And the computed average age of these structures is actually 43.7 years, and we submitted that to the Auditor as well. I just wanted to add that given the geographic location of the city of O'Neill, relative to interstate highway systems and major rail lines, we have to be quite competitive in the area of economic development. Tax increment financing has afforded us the opportunity for the development of an assisted living facility; a Holiday Inn; a 24-acre hydroponic plant, which we are currently working with the developer on an addition that will have an investment to the city totaling \$17.5 million. We have a dental clinic, a financial institution, an expansion to a beverage distribution facility, as well as infrastructure for housing development. Tax increment financing has also secured over 130 full-time jobs, benefiting not just the city and Holt County, but our entire north-central region. Several of these projects are already paying real estate taxes, which has impacted our tax entities immensely in the last few years. Our valuation this last year went up \$30 million for the city of O'Neill. Rural Nebraska needs tax increment financing to incentivize sustainability and growth. So I thank you for your research in this. Can I answer any questions for any of you? [LR60]

SENATOR WAYNE: Any questions? Seeing none, thank you. [LR60]

NIKKI SCHWANZ: Thank you so much. [LR60]

SENATOR WAYNE: Next we'll have...you coming up on his behalf? [LR60]

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JOE KOHOUT: (Exhibit 19) Chairman Wayne, members of the Urban Affairs Committee, my name is Joe Kohout, K-o-h-o-u-t. I am the registered lobbyist on behalf of the United Cities of Sarpy County. Mayor Doug Kindig was here, and I am providing a copy of his testimony. He unfortunately had a commitment back in the city at 5:45, so was unable to stay. With that, I'm going to be quiet and let you read his testimony. [LR60]

SENATOR WAYNE: So is that a no on the subpoena? [LR60]

JOE KOHOUT: I... [LR60]

SENATOR WAYNE: Okay. [LR60]

JOE KOHOUT: It's up to you, Senator. [LR60]

SENATOR WAYNE: Well, I appreciate it. Any questions for him? All right, thank you for coming. [LR60]

JOE KOHOUT: Thank you. [LR60]

SENATOR WAYNE: Next, we'll have Christy Abram (phonetically). [LR60]

\_\_\_\_\_ : Abraham. [LR60]

SENATOR WAYNE: Abraham. I'm having a long day today. [LR60]

CHRISTY ABRAHAM: (Exhibits 20 and 21) Good afternoon, committee members and Chairman Wayne. I'm so glad to be with you today. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m. I'm here representing the League of Nebraska Municipalities. I am distributing to you two documents. I know you don't want me to repeat my testimony that you've all heard in North Platte, so I'm trying to just give you some updates on what has happened since then. But there are a couple of things I want to mention. You'll have before you the updated list of things that the League is doing to address the concerns in the Auditor's report, and the second item is

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the TIF checklist for city officials. The League's annual conference was last week. We had two sessions on TIF. Myself and two folks from the Lincoln City Attorney's Office presented, and it was the big unveil for the TIF city official checklist. And I just wanted to mention we had about 150 people registered for the conference, so I made 120 copies of the TIF checklist, because, I just want to say, we have excellent sessions at the league conference and I didn't think every single person was going to go to the TIF one. I thought, oh, you're going to want to go hear about abandoned property or other things. We ran out of the checklist. And I had requests for more copies, which we have provided to those municipalities. And I guess the takeaway I want to leave you with is: We really feel strongly that cities want to do TIF right. They want resources to help them do TIF correctly. And I do think the TIF checklist is going to help them do that. And I just want you to look at it just briefly. I did give a copy of it to the Auditor's Office for their review, because we really did try to think about what the Auditor's Office may want, and help cities collect the documentation that the Auditor says they want. And I know it's a cliché, but this really is a checklist. You can put a little check by every single thing that you do that is required by state law. There are also lines where you can say, hey, look, this is where my blight study is filed, this is where my cost-benefit analysis is filed, this is my date of publication for all of the notice provisions that are required in TIF. So we're hoping it's going to be a helpful document for cities if and when they are ever audited again, that hopefully this document is going to help them and the Auditor say, oh, yeah, you want our blight analysis, great, this is where it's filed, this is the date that we adopted it. So we're really hoping that will be a useful tool for everyone. The other thing I wanted to update you on is the Nebraska Bar Association had their real estate institute a couple of weeks ago. I was able to present at that real estate institute about the TIF. We call it the red book chapter. I assume this book used to be red. As you know, the Bar Association is completely paperless now, so it's all electronic. But in the past apparently it was red. Anyway, everyone who attended that conference received that chapter. There were 150 attorneys present, there was also folks that attended via webinar. So I'm thinking probably 200 attorneys have already received this TIF red book chapter. I received an email from the Bar Association yesterday. They're putting the final touches on and that chapter will then be for sale for anyone who may want it. It's a really comprehensive look at TIF law, and I think again it will be very helpful. The final thing I want to mention is at the last hearing you heard some concerns raised by school districts. We wanted to let you know we have a meeting set up next week with NSEA, School Board Association, and NACO to talk about the concerns that they raised at the

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last hearing. As you can probably guess, the league will never be able to support a situation where a school district would be able to veto a TIF project in some way, but we certainly want to have discussions with them about how to get them involved earlier in the process in the TIF project. So that's my updates for today. Thank you so much for your time. It's so good to see all of you. And I'm happy to answer any questions you might have. [LR60]

SENATOR WAYNE: Any questions from the committee? Seeing none, thank you. [LR60]

CHRISTY ABRAHAM: Thank you. [LR60]

SENATOR WAYNE: For the letters for the record we have Nebraska Economic Developers Association; Monica McManigal, Knox County Assessor; and John Moore from Dawson County Assessor; and the Mayor Kindig from city of La Vista was just presented. At this time, we'll open it up to public testifiers. You're the first contestant on The Price is Right. [LR60]

MARV FRITZ: Thank you for taking the testimony. I'm Marv Fritz. I was the... [LR60]

SENATOR WAYNE: Spell your name, first and last. [LR60]

MARV FRITZ: Okay. M-a-r-v F-r-i-t-z. Actually, I was the subject of your Garden Fresh Vegetables audit. But I got interested in this issue from a letter that Senator Genone (phonetically--Groene) had sent into the World-Herald and I responded in the Word-Herald. But I thought he gave a badly misplaced vision of what TIF is and what it does for the state. And it matters little if it's in a rural or urban setting, it is needed anywhere that new investment is probably not going to happen for various reasons. He leaves TIF with a huge misrepresentation of how it generates dollars. We used TIF on two projects in O'Neill in the past 16 years. First built an assisted living facility, which was built when nobody knew what they were and whether they would even come close to working in a rural area. And the second one was the 24-acre hydroponic greenhouse, of which nothing comparable existed between Detroit and Colorado. Both were done with community investment, one successfully financially, the other not so much initially. But most importantly, neither of them would have existed without TIF. And when I moved to Holt County in 2000, which was my hometown basically...or Atkinson, which is to the

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west of there, we were the lowest...we lost more people than any county in the state of Nebraska was the...we were left. It was almost to the point we were dropping that you could figure out who was going to get to shut the lights off last. We could figure out what year that was going to be. So by investing in that, we've added 100 year-round jobs, full-time. We've paid out more than \$20 million in payroll taxes...or in payroll, excuse me, seven times turned \$140 million in economic activity. We've spent more than a couple of million dollars on parts and services locally, and this is all above the \$17 million we put into the two facilities to start with. So if you take 30...just say there was 30 out of those 100 people had a home and they paid \$2,000 a year, which would only be a \$100,000 home in O'Neill. That would generate \$60,000 a year in taxes from day one. And the TIF benefit was only \$50,000 per year for the two outfits together, so it was never a cost. His article was that, and you all have been talking about the rules and regs for whatever. It's the cost of...TIF is never a cost. It's, you know, 100 percent of zero is still zero if somebody doesn't do anything. So if...and then, more importantly, people fail to realize quite often is that it isn't the one business that's starting it is necessarily everything that happens. It's that one starting and then something building on top of that, and so on and so on. We've in fact doubled the size of that assisted living. We didn't even ask for TIF on the second go around because it was doing well and the community had been good to us. We were just trying to take care of the community. And all really TIF is, is a way to get...when it's a new type of project like that or it's something where it's not a very good place to put your money based on what's going on in the rest of the country around it, a place to let the community take a little bit of that risk initially and then hopefully everybody will benefit down the road. We understand that there was some extra kids that came from that and the school district is now larger again than it was, but I don't consider that a bad thing. You know, most of the schools around where I lived, in Bartlett for 30 years before that, has, you know, that 290 kids in there. When my first kid started, there was I think 19 kids in the whole high school system now for a whole county down there. So we don't have any other way to get money into...I mean, people can go other places. And, you know, the arguments may not be the same for the interstate, but in our part of the world it's a way to get people to put money in there that they might not otherwise. When I moved to town in O'Neill in 2000, the valuation in town was \$108 million. I got on the city council and so I was a little familiar with the numbers. I just checked with the city clerk this morning. Our valuation is \$179 million. Only those first two projects of mine came on this year for a couple of \$3 million in valuation. The rest of that valuation came from the fact that people had to bid for higher prices

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for houses where had nothing...none of that tax, with the exception of those first couple deals, none of those items are on the tax rolls yet. They'll be coming on in the next few years. So that's a lot of valuation increase, a lot of money we don't have to ask for Lincoln and Omaha from because we've increased our valuation and we can get it from ourselves. And then I heard a lot of comments about the blighted and substandard. I've got one person on the city council that hasn't talked to me for about ten years because I told her that she should get her end of town blighted and substandard because most...because it's the old part of town, that the connotation of that, even though it is, was bad enough that they didn't want to do that. But we have all these people putting...spending money on the north side of town, so the city has to come in and they got to put in streets, they got to put in sewer, they got to put in all this stuff. And they could put it in the old part of town if you would not put so much emphasis on...or just let, you know, where...yes, we need to keep records, but give...let that money go into those kinds of places easily. It would save the city a lot of money overall. But anyway, I didn't bring...I intended to get all of these comments, all 49 senators and the Governor one based on that letter. So I will do that, you'll be hearing from me. But thank you for your time today, I really appreciate it. Any questions I'd be glad to... [LR60]

SENATOR WAYNE: Any questions? [LR60]

MARV FRITZ: I know you want to get to a football game (inaudible). [LR60]

SENATOR WAYNE: Hey, well, don't leave, because I want to talk to you afterward, after the hearing. [LR60]

MARV FRITZ: Sure. [LR60]

SENATOR WAYNE: I want to talk to you afterward. It's about hydroponics. I'm trying to figure out how to move more urban farming, so it's a good idea. Any other... [LR60]

MARV FRITZ: (Inaudible) talk to you about that. [LR60]

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SENATOR WAYNE: (Laugh) Any other public comments? Any other public comments? Going once, going twice. All right, this will conclude our hearing in Grand Island on LR60. Thank you all for coming today. Drive back safe. And you can always join us again next Friday in Lincoln.  
[LR60]