KMK Consulting Company LLC

# The CEO Resource

**Summer 2016**

The CEO Resource is a periodic hot sheet of resource information for our colleagues, Chief Executives and Senior Management in business and leadership. Our focus is to help senior management and company owners accelerate their pathways, first to "success" and then to "making a difference" – a significant difference for their families, their stakeholders and their communities. The CEO Resource is a time sensitive tool directly responsive to this critical focus.

## OHIO MODERNIZES TAX CREDIT; DOUBLES DOWN ON PRO-BUSINESS INITIATIVES

**By: Thomas G. Seward, Jr.**

Since taking office in 2011, Ohio Governor John Kasich has made the reduction of the personal income tax one of his major initiatives to help attract and retain more businesses. In 2015 the income tax rates for all Ohio taxpayers was lowered by another 6.3 percent, reaching the lowest rate in over 30 years (1982). These tax cuts benefit Ohioans and the businesses that operate in Ohio, but they were beginning to have an adverse effect on the state’s key economic development incentive, the Ohio Jobs Creation Tax Credit (JCTC).

The value of the JCTC program was calculated from the Ohio income taxes withheld by a company in a calendar year. So as Ohio was lowering the income tax year-over-year, the value of the incentive was decreasing. The reduced value of Ohio’s key incentive not only lessened the programs impact, it made it impossible for companies to appropriately forecast the future impact of these credits when trying to make location decisions.

In late 2014, the Governor’s office took a proactive approach to this issue and consulted with the Ohio Development Services Agency, JobsOhio, the Ohio Department of Taxation, and the Ohio Office of Budget and Management to work on a solution. Using the legislative vehicle of House Bill 64, the state’s biennial budget bill that was passed by the 131st General Assembly on June 30th, 2015, the state modernized the JCTC program.

The state modernized the program by changing how the credit was calculated, moving away from using the net new Ohio income tax withholdings to calculating the credit on a percentage of the net new Ohio payroll, a variable that is directly within the company’s control. This change was retroactive,

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***Did you know?***
Nearly half of public incentives awarded for projects are never collected because companies do not have the resources to meet initial and ongoing compliance requirements.






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allowing any companies that were approved for a JCTC after January 1, 2014, to modify their agreement to a payroll based credit. This change provided much needed stability and predictability to one of Ohio's key tools in economic development.

**Overview of the "modernized" JCTC program:**

- State of Ohio's most lucrative incentive program
- Calculated by a percentage (typically ranging from 0.4-3.3%) of the net new Ohio payroll for a term (typically ranging from 5-15 years)
- Program is discretionary, meaning the percentage (rate) and term are negotiable and must be approved by a public body (Ohio Tax Credit Authority) prior to a decision being made
- Awarded to companies with a competitive project, where the tax credit is a major factor in the company deciding to add jobs in Ohio versus another state
- Minimum commitments of 10 new jobs created and $660,000 in new payroll within three year period
- The credit is applied to the companies' Commercial Activity Tax (CAT)
- Credit is refundable, meaning if the annual credit exceeds a company's CAT liability in a given year, the remaining credit is awarded back to the company through a check from the State Treasurer of Ohio
- Performance based, meaning the credit isn't capped and the company receives credit for all net new Ohio payroll during the term
- Must maintain commitments and remain operational in Ohio for 3 years after term

As a result of these changes, the JCTC remains a very lucrative tool for business growth when negotiated effectively. To ensure your success and maximize the support of the JCTC offered, we always recommend retaining professional counsel. These programs in Ohio and across the country are not simplistic, regardless of how they may appear on the surface. KMK Consulting has delivered impressive results for our clients, securing the largest tax credit per job and negotiating 2 of the top 5 comprehensive incentive packages per job in 2015.

**For more information contact Thomas Seward at tseward@kmklaw.com or 513-639-3970.**

**Other must read articles on Site Selection & Incentives:**

NC & TX Win Site Selection Magazine's 2016 Prosperity Cup

Small Business Tax Index 2016: Best to Worst State Tax Systems

**Quick Links:**

Columbus, Ohio Wins $50M Smart City Challenge

City of Cincinnati Approves Prevailing Wage for Projects Receiving Subsidies

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# UNDERSTANDING CLAWBACKS IN INCENTIVE AGREEMENTS

**By: James J. McGraw, Jr.**

Most government development agreements at the state and local levels, particularly in Ohio, contain some form of clawback language, exposing companies to paying back all or some portion of the incentive benefits they have received from that government entity in the event that they fail for some reason to live up to the promises made at the time of entering into the agreement. These promises generally relate to the number of jobs created or retained for a specified number of years in the community, a level of payroll maintained each year, or a level of capital invested in the particular project, which is the subject of the agreement.

These clawback clauses, terms and conditions, need to be reviewed very carefully and need to be negotiated upfront before the deal is agreed to and before the site location decision has been finalized. Otherwise, the clawback language can be overreaching and can subject the company to significant and unnecessary exposure.

A couple of sobering examples are worth reviewing to prove the point.

In a major headquarters site selection process led by KMKC recently, resulting in a major new headquarters facility of a multi-billion dollar organization with over $75M in local annual payroll, the municipality inserted a 100% clawback on a $20M job creation tax credit agreement over a 15 year promise to maintain that payroll. In other words, if the company created 750 new jobs, maintained them and their income tax revenue for 14 years, but dropped the total below that benchmark in year 15, the company would owe the city the full $20M back. The insertion of this 100% clawback was never presented or discussed with company counsel. It was added by the city as the development agreement headed to city council for approval. It was fortunately caught at the last minute, and we were able to negotiate it to a ratcheted clawback, whereby the exposure diminished in accordance with the 15 year timeline of the job and payroll retention promised by the company.

This next example relates to a very important lesson for companies distinguishing clawback policy from a return on investment common sense business analysis. In this case, the company had experienced a period of significant growth over a number of years, ran out of space to expand and needed to move to a new headquarters facility. The municipality was unable to find a suitable location to which the company could relocate and build a new headquarters building in spite of good faith attempts by city staff. The company did leave the municipality to an adjoining one and built a new, very attractive headquarters. But they did so with one year remaining on the promised term of retention under a prior job creation tax credit agreement with its legacy city. The city assessed the company for the repayment of approximately 50% of the job creation tax credits it had previously paid. The company explained that not only was the city unable to provide any location for the company to grow and build a new headquarters, thereby forcing the company to leave, but also demonstrated through an economic analysis that the city had received a return on investment of 10 times what the city had bargained for in terms of income tax revenues over the term of the job creation tax credit agreement.

Sad to say that in spite of two fairly obvious and reasonable explanations as to why a clawback assessment would seem inappropriate and illogical, the city nevertheless pursued a clawback citing a pure policy position that if a company leaves early and violates its promised term of job retention, they will be held financially liable to that city.

At the end of the day, this black and white policy position will have much greater negative consequences to this city. In this specific example, the company, unbeknownst to the city, was considering a much larger expansion back into the city. The city is losing a tremendous economic opportunity because of an inflexible policy. For companies and for government entities it is a serious matter. Clawbacks are very significant in the incentive compliance world. Always take the time to understand and talk through the consequences with the other side.

**For more information contact Jim McGraw at jmcgraw@kmklaw.com or 513-639-3968.**

## ALWAYS REMEMBER THE ROLE OF THE ECONOMIC DEVELOPMENT ORGANIZATION IN THE SITE SELECTION/INCENTIVE NEGOTIATION PROCESS

**By: James J. McGraw, Jr.**

Economic Development organizations are extremely important partners in the site selection/incentive negotiation process. KMK Consulting Company has worked with these organizations from New York to Honolulu and from Washington to Florida. Most of them are funded, at least in part, by the private sector business community. Similarly, the government jurisdictions at the state and local levels that they represent are equally critical to the process of winning deals for their states and local communities. Companies must appreciate the fundamental principles involved in working with these partners.

One of the most fundamental concepts is to always remember that the professionals in these organizations do not represent the company. While they owe a duty to win deals and are very measured by the businesses they attract and retain and grow, they must be committed to this process by providing no more support financially to a project than is required to win that project for their jurisdiction. This is sometimes hard to remember on the company side of the desk, particularly when so many of these professionals earn the trust and respect of the company's decision makers and executive team. Significant financial benefits are left on the table in deal after deal because companies that are not professionally represented by attorneys and consultants who live in this world daily, are not utilized because either the inexperienced individual don't understand the process fully or the company decision makers believe it can be done by themselves, on their own.

A second fundamental principle is to always remember who is the buyer and who is the seller. This concept is even more misapplied than the first one above. Make no mistake. The company is the buyer. The government jurisdictions, along with their public private economic development partnerships are the sellers. This concept is manifested in several glaring ways. First, the company should not be apologetic for what it needs in terms of government support to make the project successful in the jurisdictions under consideration. They should deal with governments and their agents in the spirit of total respect, understanding, and cooperation. But they should also be prepared to eliminate the government jurisdiction from consideration when the sales process, i.e., the types, levels and attitude of support is inadequate.

But much more serious is the positioning of the government jurisdiction as the seller, with all of its professionals acutely aware that they need to do the selling of their community and provide the creativity in attitude to try to make their types and levels of support work successfully to win the deal. Sorry to say, but this critical position of the government as the seller is frequently short sided by the government economic development professionals and elected officials including council members and mayors. While most states do a good job of understanding this sales position, local jurisdictions many times do not follow suit. This has become more exacerbated recently because of economic resurgence in many cities to the point where city government leaders have even demonstrated an attitude that no matter how anti-growth their policies and their legislative adjustments to compress incentives, nothing they do will hamper their communities' growth. Because KMK Consulting also advises communities on growth strategies and practices, we hope this attitude of "too attractive to fail" is short lived and quickly abandoned at least by any community that wants to sustain its competitive advantages.

Remember who is the buyer and remember who is the seller. Economic development business attraction and retention is all about the sales process. Always remember who is on which team and remember that companies can locate, can move, and can grow almost anywhere.

**For more information contact Jim McGraw at jmcgraw@kmklaw.com or 513-639-3968.**

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## DOWNTOWN SPRINGFIELD OHIO IS BEGINNING TO SPRINGFORWARD

**By: Horton H. Hobbs IV**

In the summer of 2014, Paul Hiltz, President and CEO of Community Mercy Health Partners, introduced the Chamber of Greater Springfield, Ohio President and CEO Mike McDorman and me to an individual who has been involved in the re-birth of many neighborhoods in Cincinnati, Northern Kentucky, and Southwest Ohio. During our short time with Jim McGraw, President and CEO of KMK Consulting, we explained the progress and change happening in Springfield, both in and around our downtown. Like many Midwestern, rust-belt communities, our town developed from a strong urban core that was once the hub of the city. At its height in the 1940s and 1950s, Downtown Springfield was a bustling place full of life and activity. Then, the loss of a couple of major employers, the growing allure of suburbanization, and the development of the Upper Valley Mall, downtown Springfield began a slow and opportunistic decline. Since the early 1970s the downtown has struggled to recapture the magic. However, not all has been lost. There were reinvestments in downtown in the mid-1970s, and then again in the early 1990s and early 2000s. In fact, there has been approximately $400 million in investment since 1999. For each resurgence, there was one common ingredient . . . *leadership*.

When Mike and I met with Jim, he described similar examples of downtown resurgence, and he highlighted the successes of each. The key to each was leadership. Leadership to develop a vision. Leadership to bring folks together. Leadership to raise the capital necessary to leverage development. Leadership to take a risk. And, leadership to peddle hope to a community or respective neighborhood that needed it. It has been "leadership" that has created local success stories like the Hamilton Ohio's CORE and Cincinnati's 3CDC directing Cincinnati's Over-the-Rhine revitalization. Each are unique and each have had varying degrees of success. But each have had a common ingredient . . . they were driven by *private sector leadership*.

Needless to say, our encounter with Jim began to change the way we were looking at our community and its strategic redevelopment. As we reflected, it became evident that the past decade of downtown investment in Springfield has largely been funded, and therefore led, by the public sector. From street improvements, to a performing arts center, an ice rink, a new downtown park and whitewater enhancements to the Buck Creek. Certainly, these helped leverage private investments such as Springfield Regional Medical Center, Ohio Valley Surgical Hospital, and a handful of professional office relocations, but by 2014, momentum had begun to subside and something was missing.

We asked Jim to lead a series of interviews with key public and private sector leadership throughout the community to see if there was an appetite to come together once again around our downtown. The key this time was that it needed to be led by the private sector, both verbally and financially. By early 2015, with nearly 25 interviews completed, it became clear that there was a desire to come together. After a few more months of guidance from Jim, a private sector leadership group emerged. Co-led by our hospital CEO and Community Foundation Executive Director, the group began to form and grew to include the CEO of convenience store giant Speedway, a local developer, and the Executive Director of our largest private family foundation.

The goal of the group was simple: Provide proactive, private-sector *leadership* to the revitalization of Springfield's urban core through qualified, catalytic commercial and residential real estate investments. To do so would require raising "patient capital" to provide funding for strategic real estate acquisition, investment, and below market properties for conversion to owner occupancy within Springfield's urban core. The organization they created is now referred to as "SpringFORWARD," and among the original leadership, $4.85 million has been raised to establish a catalytic fund to help provide gap financing for redevelopment. In its first 6 months of existence, the organization has done the following:

1. Incorporated as a 501(c)(3);
2. Established an Investment Committee;
3. Secured the initial seed funding for the creation of an investment;
4. Added the Chamber of Commerce and government leadership at the City of Springfield and Clark County to the leadership table;
5. Visited several best practice communities;
6. Held listening sessions with a broad demographic to inform redevelopment strategies;
7. Convened the local banking community to inform them of the Organization and seek their financial participation;
8. Helped promote the conversion of two buildings from commercial to residential condominiums;
9. Funded and completed a downtown market analysis;
10. Funded and completed a hotel feasibility study;
11. Developed consistent branding and messaging for public awareness of projects.



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Items in process:

1. Launching a partnership with 3 local Springfield-based architects to develop “idea generating renderings” for the reuse of several key downtown buildings;
2. Funding downtown redevelopment designs; and
3. Attracting a market-rate residential developer to convert a prominent building from commercial to residential reuse.

Much has happened behind-the-scenes over the past several months and progress has been steady for the past five years in Springfield; and not just in the downtown. Job growth has been on the rise as well. Anchored by the addition of 350 headquarter jobs at Speedway, LLC and 500 new production jobs at Navistar, companies such as Assurant, Dole, Hroux-Devtek, Pentaflex, and Yamada North America are finding Springfield to be the ideal location for expansion. For most of these projects, the future of our downtown was an important consideration in their decision to grow here.

Downtown redevelopment in Springfield, and elsewhere, will not be easy or free of setbacks. Certainly anything worth doing is not easy, but the rewards are worth it. It was leadership in the past that fueled change in our downtown, and it will be leadership now, that will make the difference for our future. Our future is brighter today than perhaps ever before!

**For more information contact Horton Hobbs, Vice President of Economic Development, The Chamber of Greater Springfield at hhobbs@greaterspringfield.com or 937-325-7621.**

**Downtown Springfield**

Photo courtesy of Rod Hatfield, July 5, 2016. Used with permission.

## RURAL INDIANA REGION LANDS MILLIONS FROM LILLY AND OTHERS FOR BIG BUSINESS RECRUITMENT PUSH

**By: Jeff Quyle**

Radius Indiana, the eight-county economic partnership in Southwest Central Indiana, leads regional collaboration to drive attraction, retention and expansion of business, aimed at increasing employment, investment opportunities and quality of life within the region.

And the Radius region has much to offer. Located about two hours west of Cincinnati, the area boasts world-class manufacturing, research and innovation assets, a multitude of desirable sites, as well as a robust workforce known for its work ethic and ingenuity. It is home to stellar communities, the third largest naval installation in the world and the I-69 corridor, which brings invaluable connectivity to the region.

To add to the attractiveness of the region are two exceptional funding opportunities for established companies, new businesses and entrepreneurs.

First is the Southwest Central Indiana Initiative, which is funded by grants from the Lilly Endowment totaling $42 million. The funds will advance a range of activities focusing on research and development, workforce and education initiatives, and projects that enhance the region’s quality of life.



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The largest portion of the grant, nearly $26 million, is allocated to the implementation of an education and workforce plan and a regional opportunity fund for quality-of-place investments facilitated by Regional Opportunity Initiatives, Inc. (ROI). ROI is a newly-formed nonprofit with a mission to support regional development opportunities in 11 counties of Southwest Central Indiana, which include all eight Radius Indiana counties of Crawford, Daviess, Dubois, Greene, Lawrence, Martin, Orange, and Washington Counties plus three counties to the north, Brown, Owen and Monroe.

ROI will implement an education and workforce plan focused on connecting education to industry, creating a native workforce that is prepared for the demands of employers. ROI will also implement a comprehensive and ongoing assessment of occupational needs within the region, initially focused on life sciences, advanced manufacturing and national security and defense sectors.

Most importantly, the ROI also oversees a Regional Opportunity Fund (ROF), seeded by grant funds, to support strategic planning and investment in quality of place development that has the potential to benefit the entire region.

Businesses in the Radius Indiana region also benefit from the Regional Impact Fund (RIF), which supports area growth and expansion efforts. The RIF is a sub-organization of Radius Indiana with a sole purpose of making investments in public and private organizations that advance regional economic development strategies.

The RIF makes such investments in the form of grants, loans, equity investments, or other such vehicles deemed to be in the best interests of Southwest Central Indiana. The RIF gives high priority to projects that include job creation, site development and expansion. In 2015, the RIF distributed more than $1 million to area businesses.

“We know that additional, and sometimes non-traditional, funding brings opportunities that can be game-changers for many businesses,” said Jeff Quyle, president of Radius Indiana. “We are fortunate to have grants and loans that are unique to our counties and that truly help businesses achieve their goals. Every business helped directly impacts our efforts and our mission of growing our regional economy.”

**For more information about the region and Radius Indiana, contact Jeff Quyle at j.quyle@radiusindiana.com or 812-277-9778.**

**Other must read articles on Economic Development:**

Columbus, Ohio Wins $50M Smart City Challenge

City of Cincinnati Approves Prevailing Wage for Projects Receiving Subsidies

## THE BROAD REACH OF EB-5: A GOOD FINANCIAL TOOL FOR NON-TRADITIONAL INVESTMENTS

**By: Marcus V. Phelps**

EB-5, the U.S. Government’s program to draw foreign-direct investment, pumped life into the U.S. real estate industry over the past few years. Though enacted over 25 years ago, EB-5 caught fire in the commercial real estate industry after the recession when investment and lending wells ran dry.



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The largest EB-5 projects are commercial real estate developments, which include: Hudson Yards in Manhattan, Pacific Park in Brooklyn, and the Four Seasons Hotel in Manhattan. These three projects alone raised over $1.5 billion in EB-5 capital. Considering EB-5's low interest rates makes EB-5 an even more lucrative source of funding. As such, it is easy to see why developers ferociously pursued EB-5 in recent years. EB-5 applications in 2015 were more than 11 times higher than applications received in 2008, with $13.05 billion invested in that timeframe.

Though investors are attracted to larger-than-life developments that are thought to be more secure investments, what are other investment opportunities out there? Below are a few EB-5 investment options that may not have the large development allure, but are still good investment opportunities.

**Charter Schools**

Charter schools are considered "recession-proof," because the government will provide a steady stream of funding for the school to operate and the schools are in high demand. However, in most states, governments do not fund classroom, library, or facility construction and EB-5 can fill that funding void. Especially if a charter school is new and does not have a network of funding resources, EB-5 may be the only funding available as banks find new charter schools too risky to lend to.

However, there are risks inherent in any development, and EB-5 has the opportunity to be good for the investors and school. In fact, EB-5 helped develop a charter school in an Arizona area where only 20% of the population graduated from college. In 2013, the Arizona Charter School Association declared that school the "Charter of the Year." Obviously, these investments provide an important service to the community while also helping the investor achieve his or her personal goals.

**Healthcare Institutions**

In 2015, the first U.S. hospital built using all foreign capital opened in Arizona with the majority of the financing coming from EB-5. Hospital planning started in 2007, but the recession forced the developer to investigate nontraditional ways of financing, and EB-5 filled that gap. This financing proved incredibly helpful as the average age of community citizens was 71, and the previously nearest hospital was an hour away.

In Birmingham, Alabama, EB-5 provided nearly half of Baptist Health System's (BHS) expansion financing. The financing was structured as a loan and loaned to BHS to pay off a bridge loan, helping create over 787 jobs there.

Similarly, University Hospitals in Cleveland, Ohio, used EB-5 to raise $60 million of its $1.2 billion expansion, creating an estimated 3,400 jobs along the way.

**Colleges and Universities**

Another investment opportunity that may not be as obvious as big real estate projects are college and university developments. Developments affiliated with colleges and universities may be attractive to investors, because investors may have more favorable views of investments in, or relating to, educational institutions. Some of these investments have been: a mixed-use development in College Park, Maryland, servicing students at the University of Maryland; and the University of Miami Life Science & Technology Park at the University of Miami.

**Rural Areas**

Though part of the EB-5 project intended to direct investment into rural communities, many of the EB-5 projects are directed to larger cities. For instance, the 11 largest EB-5 projects are located in the following cities: San Francisco, Las



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Vegas, and New York City (which contains 9 of the largest EB-5 developments). A map produced by Invest in the USA shows that in 2013, many areas that received the most EB-5 investment were concentrated in the largest cities.

With bigger cities receiving much of the investment, rural development projects could have more trouble getting funding while fighting for attention with the big cities. However, is there a possibility that more EB-5 developments will be directed towards smaller, rural areas? Though EB-5 is set to expire at the end of September 2016, its renewal should see major amendments, including more emphasis on rural communities.

**For more information contact Jim McGraw at jmcgraw@kmklaw.com or 513-639-3968.**

## THINK YOUR PROJECT IS NMTC ELIGIBLE? ACT FAST!

**By: Geoffrey G. Leder**

The New Markets Tax Credit ("NMTC") program can be a useful tool for attracting additional sources of capital to your company's real estate or operating business project. To be eligible, the project must be located in a low-income community and cannot be engaged in certain prohibited activities (e.g., renting real estate solely for residential purposes; principally engaging in farming activities; or operating a tanning bed facility, massage parlor, golf course, race track or liquor store). Community development entities ("CDEs") receive allocations of NMTCs from the federal government and select which projects receive the benefit of the investment. An investor makes a qualified equity investment in a CDE in exchange for a credit against its federal income taxes totaling 39 percent of the total investment amount claimed over a seven-year period. The CDE uses the investor's investment to make a qualified low income community investment in a qualified active low-income community business, and this qualified business receives approximately 18 to 25 percent (subject to a number of different factors) of the total investment in the form of additional capital for its project.

The NMTC program is on stronger ground now than ever before and may be becoming a permanent feature of the tax credit landscape. In December 2015, Congress extended the NMTC program for five years through 2019 at $3.5 billion annually. This is the longest such extension in the last several years of the NMTC program. In addition, for the combined years of 2015 and 2016, the Community Development Financial Institutions Fund of the Department of the Treasury (the agency that administers the NMTC program) combined both years into one round of allocation and will award $7 billion to various CDEs. Allocation awards for this double round are expected to be announced sometime this fall. So, if you have a project that you think might qualify for the NMTC program, now is the time to contact CDEs to attract an allocation of NMTCs to your project.

If you are interested in taking advantage of this opportunity, KMK is here to help. Over the last decade, we have provided support to project developers, qualified businesses, investors and CDEs in numerous NMTC transactions throughout various states, including several transactions involving state NMTC programs that mirror and work cooperatively with the federal NMTC program. We have closed NMTC investments totaling hundreds of millions of dollars, and we can assist your project as well.

**For more information contact Geoff Leder at gleder@kmklaw.com or 513-562-1403.**

**Other must read articles on Public Finance:**

3CDC: The Revitalization Engine of Cincinnati

Where have EB-5 Investor Markets Grown?

EB-5 Project Size & Target Raises 2015

# KNOW WHAT IT MEANS FOR A SITE TO BE SHOVEL READY

**By: Greg Elam**

Promoting a site as a “shovel ready” site does not mean it is really ready for any client. Case in point, a recent announcement of a large greenhouse operation coming to the United States. With utilities ranking in the top three issues for this type of client, electricity and natural gas and cost of infrastructure are critical for “shovel ready” status.

While the words “shovel ready” site sound impressive, the devil is always in the details. That is, for a big box distribution center or other smaller energy users of natural gas and electricity, the site being considered “shovel ready” is often fairly simple. However, the project in question was not small, nor was its energy consumption. With the ultimate electricity usage large enough to power a city with a population of 80,000, and natural gas usage large enough to power a large manufacturing plant, this is anything but normal.

Projects such as a 200 acre greenhouse operation do not follow the normal course of construction. They move at record speed, going from stakes in the ground to growing vegetables in six months, creating a far greater sense of urgency to have utilities on site and capable of meeting the demands for both natural gas and electricity. With major improvements needed to make the “shovel ready” site actually ready, this project forced the local municipality to accept the fact that the site was only acceptable for certain size projects, and this was not one of them. While the local natural gas utility company made promises of being able to meet the deadlines for the volume of natural gas being requested, it took intense meetings with the natural gas utility company to get them to admit their vulnerability and lack of actual capacity. It also flushed out their definition of investment, which was to have this customer pay for the capital improvements, and they [the utility] will invest it in the improvements. And to make matters worse, then earn a return on this customer’s capital through it becoming part of the utility’s rate base.

Negotiating this project forced all of the inequities and lack of fairness of how utilities earn a return to be brought to the center of attention. Yes, the elephant was in the room. Under this circumstance, the customer was going to spend millions of dollars for energy service upfront, as would the municipality. Sadly, the investor owned utility was not willing to make any infrastructure investment into the community, unless that money came from this client or other rate payers. However, through tough negotiations with the natural gas utility, they finally agreed to make the investment to make this project happen.

It may have been the elephant in the room at the time, but now this community will be able to springboard off of this project. It took knowing the details and ability to push back on the utility to improve this infrastructure where needed, in order to properly call this major site “shovel ready.” It is our understanding that another major project has already made an announcement to locate in the vicinity. This is just one such example of why it is important to have the right firm representing the client’s interest, as the utility will not always represent the client’s interest, and many companies aren’t aware that negotiating with utilities is common business conduct in our site selection practice. Taking that comment a step



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further, customers should face the fact that the utility represents its shareholders' interest first, not that of the customer. This should be the catalyst for customers to take charge and put the best team on a project when seeking a new site/location.

**For more information contact Greg Elam at gelam@stepresources.com or 513-273-8052.**

## KMK CONSULTING NEWS:

## KMK CONSULTING COMPANY WELCOMES THOMAS G. SEWARD, JR. AS DIRECTOR, CORPORATE LOCATION STRATEGY

KMK Consulting Company LLC (KMKC) welcomes Thomas G. Seward, Jr. as Director of Corporate Location Strategy with KMKC's Site Selection Group. In his role, Seward will lead KMKC's site selection and incentive negotiation teams for the company's corporate clients in the Cincinnati region and across the U.S. Seward also will lead all of KMKC's compliance services for its clients operating under state and local incentive agreements in Ohio and nationally. He will be an important resource to KMKC's economic development organization clients throughout the U.S., as they continually strive to raise the bar on successful business development strategy, tactics, and implementation.

"We are both excited and fortunate that Thomas chose KMKC as his new home to take his expertise to the next level and to launch his corporate site selection career in the private sector. Having worked closely with JobsOhio, REDI Cincinnati, and with economic development professionals across the U.S., I appreciate and respect Thomas's tremendous skills, attention to detail, and professionalism. He is a terrific addition to our team. Thomas's impact will be immediate. He brings outstanding leadership to both KMKC as well as to our Cincinnati USA hometown community," said Jim McGraw, President of KMKC.

Prior to joining KMKC, Seward was part of the team that established JobsOhio. As Senior Project Manager, he worked with more than 500 companies, resulting in commitments of more than 25,000 new jobs and $3.1 billion in capital investment. His work in the Cincinnati, Columbus, and Dayton markets included significant projects such as General Electric's Shared Service Center (Cincinnati), Procter & Gamble's Distribution Center (Dayton), and Zulily (Columbus). Seward served as a Senior Project Manager with JobsOhio for four and a half years, after working at the Ohio Department of Development and on Governor Kasich's successful gubernatorial campaign. He previously worked for First American Bank in Chicago, Illinois. Seward earned his B.A. from Southern Methodist University in 2005.

"After more than nearly five extremely successful years with JobsOhio, since its launch, for which I am sincerely thankful, I'm eager to take on this new opportunity at this stage in my career and join KMKC," said Seward. "KMKC's reputation is second to none, and my focus will be to build on that momentum to help further develop its national operations and impact. I am passionate about KMKC's strong client-centric mission, and I am excited to have the opportunity to work with such a professional group of successful individuals."

be afforded the protection normally afforded to communications between attorneys and clients under the attorney-client privilege.