

**INDUSTRIAL DEVELOPMENT BOARD**  
**Thursday, November 19, 2015**  
**Administration Conference Room – 5:30 p.m.**  
**Department of Economic and Community Development**  
**1920 S. Germantown Road**

The Germantown Industrial Development Board met on Thursday, November 19, 2015 in the Administration Conference Room. Chairman Henry Evans called the meeting to order at 5:30 p.m. A quorum was established with the following members present.

**PRESENT:** Chairman Henry Evans, Dick Vosburg, Vice-Chairman Mike Harless, Keith Saunders, Frank Markus, Greg Marcom, and Julie Klein

**ABSENT:** None

**GUESTS:** None

**STAFF:** Marie Lisco, Economic Development Manager, Cameron Ross, Economic Community Development Services Director, and Josh Lawhead, PILOT Attorney, Burch Porter & Johnson PLLC, and Patrick Lawton, City Administrator

**MINUTES**

A motion was made by Julie Klein, seconded by Keith Saunders to approve the June 4, 2014 minutes. The motion passed. Greg Marcom - abstain.

Mr. Evans stated that we have a new board member, Greg Marcom, from last February. We would like to welcome him.

Greg Marcom noted, "I'm glad to continue my service to the City of Germantown."

Mr. Evans stated that we are going to take item number 7 out of order and move it up so we can discuss it next. Those of you who have been on the board for several years will remember when the Arthur property was being seriously reviewed for development. One of the items of finance that came to the top of the table was a (TIF) Tax Increment Financing. So, we as a board, along with the City's finance advisors and City staff spent quite a bit of time looking at Tax Increment Financing. Just as a brief reminder, Tax Increment Financing establishes the base tax rate of the property prior to development. Then, you establish the tax rate of the property following the development, and that incremental difference is what is used to pay off the debt which may be issued. At that time, we were looking at City debt being issued and that increment amount of money would pay off the debt of those bonds. At the same time, the City would continue to receive its tax revenues from the base property amount in the base year it was established. Since that time, we amended our charter to allow the IDB to actually issue tax increment financing. The board approved it following that. But then, because the Arthur property died on the vine, we did not go forward to establish any kind of processes, procedures, or policies. In the event we every have an applicant for a TIF, we still don't have that in place. There is a possibility, probably likelihood, with the Gill property on our west coast, that there may be a request coming to us. Because we don't have any of this in place, we want to discuss tonight what may or may not need to be done. In the meantime, the State also got involved in a whole issue of TIF's. Cameron Ross went to a meeting at the beginning of June and a second one at the end of July, in which TIF was fully discussed with changes.

Mr. Ross stated that Mr. Harless along with a representative from Burch, Porter and Johnson attended a TIF learning meeting presented in Bartlett, and that he and Marie attended one to the Shelby County Joint Economic and Community Development Board in June. The JECDB meeting was done by Jim Murphy who is a partner at Bradley Arant Boult Cummings and the former City Attorney for Nashville. The second one was done by the Waller Firm from one of their partners, Bo Campbell out of their Nashville office. Both of the meetings covered the basic changes in TIF legislation since 2012 under the Uniformity Act. As it related to the IDB, the changes that were approved as uses under the Uniformity Act of 2012 is for public infrastructure that would include road, streets, traffic signals, sidewalks, and publicly or

privately own parking lots facilities or garages, and other public improvements that are available for public use such as utility, stormwater and drainage improvements. But it all gets back to this idea of Tax Increment Financing of the TIF Agency, which in our case is the IDB, borrowing money by pledging the anticipated tax increment revenues to secure the loan. Also under that change in legislation is the ability for a developer to secure the private loan with the IDB and as an agent of the City securing those bonds. The developer can secure the private loan and then the IDB is the administrator of the disbursement of those loans, rather than it being a bond and putting the City on the hook for any liability. The developer then is on the hook for any liability or loan default if the project falls through. The IDB is just the distributor of funds, and more or less, the authority person that sets the tax rate and the term of that tax rate. Under the state law a tax freeze can be set as long as 20 years, but the IDB has the authority to set it for as long as we want. However, any longer than 20 years requires state approval by the state commissioner (Randy Boyd) of ECD for the state to approve that extension. They also have to approve the project as a whole after the IDB has approved the project by a public hearing. Then, before it is sent to our approval body, in this case the BMA, has to approve the project as well. So, it is a multi-step process for any sort of action around a TIF to be considered. Some of the key terms of the base tax amount are the amount of taxes payable with respect to the property and designated area for the year preceding the adoption of the redevelopment or the economic impact plan. The taxes are to be paid to the debt service for the debt to the City or County for the benefit of the state of TN. The increment is the increase of the property taxes proposed over the base tax amount and dedicated taxes. The increment can be used by the developer for approved projects like garages and infrastructure or anything else. The two agencies in this case are the IDB and Housing Authorities, but we don't have Housing Authorities here in Germantown. The economic impact plan is part of the development process for the TIF and that sets the area in which the TIF would be applied. It could be as big as a single project like the Arthur tract or something else, or could be as large in some cases as creating a TIF district such as the Western Gateway, Central Business District, etc. The IDB in Nashville has only done one IDB TIF.

Mr. Evans stated that the Arthur property application was going to be for the parking garage and the hotel. They were going to identify the parking garage to be public use. We also had infrastructure issues that could be addressed in that development. With the hotel, because part of it would be for public use, we could bring some of that cost in the TIF. That's what we were focused on for the Arthur property. The public use and the infrastructure are the real two key criteria to do that.

Mr. Lawton stated that we discussed the TIF for the Arthur property at the FAC meeting in 2007. It came on the heels of Smart Growth, we had the plan approved, and we were looking for development. We incorporated into that public private partnership policy that we worked on with the Lawrence Group. One of them was the possibility of TIF. We bolted into the P3 after the IDB approved to amend its charter. What is missing in that P3 document is the process and procedure on how you go about doing it. With the Arthur Tract, because it was over \$100 million dollar investment. I think we were saying "Okay, let's see what we can do," and we were going to do our best the first time to make it work. When it went away and the recession happened, things disappeared. However, now with the renewed interest back in the Central Business District and the Smart Growth projects in other areas, the developers are throwing around TIF. They are acting as though we have done it all the time. I just hope they aren't hinging their projects on the possibly of receiving any type of TIF for their project. I know staff has made it very clear that, yes, it's in a P3 but there is no guarantee, and I have said that as well to people. What we currently have in place in the P3 is not a process and not a procedure. We really need to nail that down. I just think we are getting too much chatter and direct contact with our office and the City attorney's office that, "Here is what we want. Sign our letter of intent." We have that from the Gill property already. Their attorney has provided the City with a letter of intent and a nice and neat package saying, "This is what you need, City, in order to provide me with the TIF."

Mr. Evans stated that before we do this, a couple points need to be typed on that. Mr. Harless said from the Planning Commission's standpoint, that somewhere along the line the Gill property was going to come in and ask for something like this. So we knew there was a need for us to develop these policies and

procedures and implement these steps that have to be followed. The second piece of that is that we are the ones that are going to be the lead agency on it. It's going to be coming to the IDB, and we are in no position, right now, to sit down and talk to any developer because we don't have tools where we know how to advise them. So the first step, it would appear, is we've got to put in place the kinds of steps that we can communicate to everybody. I do think, for the City, that it has to be done in a quick timeframe.

Mr. Lawhead stated the IDB needs to implement its own policies and procedures that would apply to all TIF's within the City of Germantown.

Mr. Harless will make a motion that City staff and Mr. Evans and I formulate a policy, then come back to the IDB with it and say we need City staff and the IDB input to work our way through that.

Mr. Harless made a motion that the City staff will, along with the chairs of the IDB and Planning Commission, develop a policy and process for consideration of TIF applicants. The development of this process should be completed no later than mid-January 2016. This policy would be approved by the IDB prior to submission to the BMA, Mr. Saunders seconded the motion.

Mr. Marcom stated, "I think you need to amend that date to mid-January 2017."

Mr. Saunders noted that it needs to be done as quickly as possible because this is something that the developers are looking heavily to use now.

Mr. Harless noted that Nashville had 8 projects that they have already approved and implementing. They are doing it in Knoxville already too.

Mr. Ross noted that we need to have something worked out by mid-January. I work better under deadlines, and we can certainly come back to you in mid-January and report what we found and maybe give you a white paper analysis to see what's best for Germantown.

Mr. Evans stated we went from zero to putting an IDB together, along with PILOT policy and procedure in something like 75 days. I've got to tell you; we can do it.

Mr. Lawton noted that the Finance department, City attorney's office, elected officials, people from the private sector and Administration needs to be involved with this too.

Mr. Marcom said that the ones which have happened in Memphis are huge projects (Crosstown, and Graceland) have a TIF in Memphis.

Mr. Saunders stated that each project has its life with regard to finance, and numbers is what makes it. So if you can use a TIF to help make those numbers work and you actually get a development, whether it's a \$200,000 or \$200 million project, it's still there to work to bring that development in place. It's a tool out there whether it's a small or large development. You have some pretty good projects coming on hand because of our Smart Growth. That really could make or break the project in my opinion. I would see it as a tool for anyone that wanted to develop in a TIF district or site by site.

Mr. Harless noted that this is a comment that the attorney (Bo Campbell) shared with us. He talked about a \$5 million dollar parking garage. They actually have one where the developer is doing the financing himself, and he's going to be paid back by the TIF. He decided that instead of going through the City for a bond, he went to the City and provided the financing and is going to get reimbursed from the TIF.

Mr. Vosburg would that work better for the smaller scale projects like we might have? I would think the cost to the developer of borrowing the money from a lender/bank is going to be a lot cheaper than issuing bonds...so that it works at a smaller scale. It does mean they lose the ability to have it tax exempt.

Mr. Saunders stated that he did not think we have anything in Germantown that would fall under the tax exempt status.

Mr. Lawton asked if the “but...for” test is still one of the things that has to be met. In other words, the project would not happen if it were not “but...for” the TIF.

Mr. Ross noted it not necessarily a test, the way they lay it out. That is something we could certainly apply within our process. We could make it a requirement. One example is the Nashville Convention Center. The Housing Authority did the TIF on that, and that was used for a portion of the project cost of the \$400 million dollar total redevelopment of that area. It also included a large garage.

Ms. Lisco stated that I wouldn't get too hung up on the Housing Authority piece, because they follow a different set of rules than the IDB TIF's do.

Mr. Lawhead noted there is a legal requirement. The “but...for” test does apply in the event that the applicant requests a TIF longer than 20 years. What I am not 100% sure of is that our policies and procedures have to be approved by the State. A plan for a particular TIF has to be approved. As Mr. Ross stated which Knoxville has a very mature and thorough written policy and procedure to do with TIF which we could borrow from. Legally, it is up to the IDB to establish the policy and procedures.

Mr. Vosburg noted that it's been eight years since I thought about this much. At that time, if I recall correctly, one of the objectives was to be able to use nonrecourse financing for the City to be able to do an infrastructure project and not affect our bond rating. It was presumably tax exempt financing for the borrower, and we had to be the final group approving it. The BMA could not get involved, because if they did approve it, then it would be recourse financing.

Mr. Harless noted that he modified the proposed motion to come back by the end of January 2016 to this organization with a proposal outline draft. Mr. Saunders seconded the motion.

Mr. Evans stated next is the consideration of acceptance of ThyssenKrupp Elevator Manufacturing and West Fraser compliance reports. These reports are submitted in March of every year to Shelby County as we are required to do.

Ms. Lisco stated they were in compliance and on time with Germantown and Shelby County. We have the letters from EDGE.

Mr. Harless asked when do both of those expire?

Mr. Evans stated 2016.

Mr. Lawhead stated that the Germantown benefits on the West Fraser PILOT expire December 31, 2015. So, the property taxes will get put back on Germantown as of January 1, 2016. However, Shelby County benefits expire December 31, 2016. Therefore, the PILOT lease will remain in effect, and the IDB will be the owner of the real property until sometime shortly after January 1, 2017. ThyssenKrupp Elevator Manufacturing benefits expire as to Germantown and Shelby County benefits December 31, 2016. However, for some reason the real property lease technically expires August 16, 2016. With respect to the Shelby County benefits, there is a five year recapture period until 2021 which requires monitoring. My recommendation is that we check with Reid Dulberger, as to what their temperature is, for being the monitoring body of that. Do they want that to be Shelby County or Germantown? In the past, their answer depends on when you call them, and it can change at any point and time.

Mr. Harless asked what will happen during the five year monitoring period if ThyssenKrupp Elevator Manufacturing fell out of compliance?

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Mr. Lawhead stated we will be meeting with Reid Dulberger to discuss this issue of who monitors them.

**ADJOURNMENT**

There being no further business to come before the board, the meeting was adjourned.