INDUSTRIAL DEVELOPMENT BOARD
Monday, August 29, 2016
Blue Conference Room
Department of Economic and Community Development
1920 South Germantown Road

The Germantown Industrial Development Board met on Monday, August 29, 2016 in the Blue 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, Keith Saunders, Greg Marcom, Julie Klein, Mike Harless, and Daniel Dent

ABSENT: None

GUESTS: John Elkington representing Carter Company, Tom Fisher, Evans Woodard, Murray Foster

STAFF: Marie Lisco, Economic Development Manager, Cameron Ross, Economic Community Development Services Director, and Andy Jones, PILOT Attorney

MINUTES 1
A motion was made by Keith Saunders, seconded by Daniel Dent to approve the June 20, 2016 minutes. The motion passed.

MINUTES 2
A motion was made by Daniel Dent, seconded by Julie Klein to approve the June 20, 2016 minutes. The motion passed.

Ms. Lisco reported that staff reviewed the compliance reports for West Fraser and ThyssenKrupp, and they were in compliance with their leases. The county also sent a letter that the PILOT's are in compliance.

Chairman Evans asked if we need to take action to indicate that we have received those reports?

Ms. Lisco said no.

Mr. Harless stated that we have a lot of new board members and many of them have not seen compliance reports. I think it would be appropriate to bring West Fraser and ThyssenKrupp before the group so they can review them.

Chairman Evans noted we are probably going to have another meeting before too much longer. So we can table this item and make sure they are brought at that time.

Chairman Evans said we had a work session on August 18. In that work session, several questions and issues surfaced. However, because it was a work session, we could not take any action that night. So items are again on the table for discussion tonight. What we will do this evening is to give us an opportunity as a board to discuss those items that we discussed last time and anything else that you feel needs to be brought up on the policy before we actually have a motion to put it on the floor.

Chairman Evans said we have some visitors here tonight who want to speak to the Board about this policy. We will hear from them after we have a motion and have the policy on the table. Following their comments, we will have another opportunity for the board to discuss before the final vote.

Mr. Ross asked if anyone wanted to revisit what was discussed in the PowerPoint at the work session?
So, where we stopped was essentially at the portion of the policy related to section four. I do want to point out, as noted in your packet on process, that we made the changes to take $5000 on the application fee

when submitted. Then, the remaining balance fee would be after the resolution was approved by the BMA to move forward with the application.

Mr. Marcom asked if in the third box for information submitted to TNECD and comptroller for preapproval, if we should also add the County and EDGE into that box?

Mr. Jones said it's in the policy that says if they have approved it. We don't actually submit it to EDGE; that's on the applicant.

Chairman Evans stated EDGE really doesn't have to approve this.

Mr. Ross stated EDGE has nothing to do with our TIF, but the County does.

Mr. Lawton asked Mr. Ross when does the County input go into the process: before or after?

Mr. Ross answered that it's not necessarily written out specifically within the policy or the process.

Chairman Evans stated that if we are moving through it, and the County said they are no longer interested, then there really is no basis for us to go forward if in fact the County is not going to be a party to it.

Mr. Vosburg commented to look at 4.7 on page 7. It basically says if they say no, then they are deemed to withdraw.

Mr. Marcom asked does that need to be on the flow chart?

Chairman Evans noted it doesn't show anywhere on the flow chart.

Mr. Ross stated that he can add that. I will have to take a closer look to where that might actually fit. So what I'm seeing is that on page 7, there was discussion and a hanging question that was left out there on the minimum TIF project in 4.6. It was a project that included at least $75 million in capital improvement to the project area as well as $10 million in public infrastructure to be financed by the tax incremental revenues.

Chairman Evans stated that you had asked after that meeting for input from everybody. What was the result?

Ms. Lisco stated we received the following feedback: 1) $50 million in capital improvements and $5 million in public infrastructure and that the public infrastructure should be a minimum 10% of the capital improvement, or 2) $60 million in capital improvements (including the $10 million for infrastructure in the $60 million), or 3) the original proposal draft amounts are acceptable.

Mr. Ross noted in 4.5 on page 6 to define all public infrastructure.

Mr. Saunders asked why do you have two 4.5's?

Chairman Evans answered the second 4.5 was added after the original. We didn't get the renumbering right. It needs to renumber to 4.6.

Mr. Harless noted if we went to a minimum of $50 million and said 10% for public infrastructure and somebody came with an $80 million project then they would have $8 million in infrastructure, if you use the 10%.

Mr. Vosburg asked does $50 million get us enough of an impact project for what we want to direct this for? We talked about this needing to be a big impactful project.

Mr. Saunders noted the TIF and taxes have to be large enough to really warrant the finance.

Mr. Ross stated there may need to be some strong language in here about it being a smart coded mixed-use project instead of a $60 million grocery store that's built in a smart code district, but utilizing the underlying zoning.

Mr. Vosburg noted the Kroger and Whole Foods are nice projects, but they are not what we are here for.

Mr. Saunders stated that in the long run, I don't see where that one particular project, although it's large, really doesn't justify that much of an impact on your infrastructure. So when you go to mixed-use where you are adding apartments, retail, roads, and parking, you're adding to the infrastructure needed whether it is sewer, water, and streets. It has more of an impact at that point.

Mr. Lawton stated there are other forms of taxes: sales tax and occupancy tax, in addition to the incremental you are applying to the debt. To support the developers, they would have all those. They would have more to draw because they are giving up 60 or 70% of the property tax.

Mr. Dent said that it does if it has retail in it, but to the extent that it is residential: not a lot of sale tax there.

Mr. Ross noted that sales tax dollars flow out elsewhere within the Central Business District, West Gateway or Forest Hill Heights.

Mr. Saunders noted that you've got a large box type structure, such as Kroger, where you have a lot of square footage but you don't have a lot of use on your infrastructure. It's limited on what's in and out on the streets with minimum use of water and sewer. How can you go back if it was a $40 million project, but it wouldn't meet the 10% in regards to your infrastructure requirements? It would fail on that aspect because it's not upgrading. If you do something where you have a major impact, numerous streets would have to be developed being able to have more than one or two points of egress into. Plus, you would have to improve your infrastructure in regards to handling the demand. Then, you've got something there that's going to increase that public infrastructure.

Mr. Ross noted the 10% gives me a little bit of pause, because you think about some place like Thornwood which has come out and said that at the end, it will be a $150 million investment. We went back and looked at their infrastructure cost for phase one, phase two, phase three, and now phase four which we recently approved to go to construction, and it does not add up to 10% of that at this point. We don't know the cost of their structured parking.

Mr. Lawton stated at the step we were asking for information on the front end and part of the decision making process, little roman numeral 11 stated on annual basis, the net revenues (after debt service) in which the City will receive after the Project has been completed to include sales, property, occupancy, and other related taxes. That is a decision pointed for all of us to make here today. It does not support a new aerial truck; we need to look at adding additional offices or whatever the demand on City services could be. What's left to support the additional cost to the City?

Mr. Vosburg noted that's the reason we talked about shaving that 70% if we went longer that 10 years, trimming that back. Because at that point, if we went out to 15 years, we are going to end up having to buy two big aerial trucks.

Chairman Evans stated we need to put something in these blanks, before we put the motion on the floor tonight.

Mr. Vosburg asked about $60 million and not requiring a percentage for infrastructure. Make it $60 million for the improvements, but then also make it tied to a smart growth area.

Mr. Marcom stated I'm a little leery to tie it to smart growth. The Fogelman property across from Target is an office campus zoned piece of property. You could have an office campus come in and want a TIF. Say FedEx comes in and wants to build their next office campus. Having it tied to smart growth can tie their hands a little bit.

Mr. Vosburg asked if we can say that it's our intent to provide a vehicle to use for smart growth development, if possible.

Mr. Ross noted 4.3 on page 6 of the redlined copy already ties to smart code areas. The smart code itself is an overlay. The underlying zoning is still active.

Mr. Lawton stated it doesn't mean it is has to be a smart code total mixed-use project.

Mr. Saunders asked if we are looking at expanding our smart growth area?

Mr. Ross noted there are the five nodes which we have talked about since 2012: the CBD, West Gateway, Forest Hill Heights, and East Gateway which includes the property that Mr. Marcom is talking about. Then, the Medical Corridor District that starts there at Wolf River Boulevard and Germantown Road.

Ms. Lisco stated two of those areas have not been studied yet. Therefore, this overlay has not been applied.

Mr. Lawton said that with all due respect, I'm wondering does it even matter if it says that or not, because everything that is nonresidential is going to be in a smart coded area eventually.

Chairman Evans noted to Mr. Ross, while you were gone, the question was, "are we defining TIF eligibility for the project sufficiently that it makes no difference, whether it's in smart growth or not, because of the impact it will provide to the City?"

Mr. Marcom proposed another piece of property as an example. Take the triangle at Neshoba and Germantown which is zoned T-4 smart growth. Say somebody wants in there and do a high dollar residential development with a garage in the middle of it?

Mr. Vosburg suggested we take out that section and leave it all discretionary about location. We talked about wanting to make smart growth work. If a project comes that is not smart growth-like/mixed-use kind of thing, we are not going to support it.

Chairman Evans stated it could say proposed or planned smart growth, which would take care of all the no's.

Mr. Harless stated the problem is that while we understand what we plan to do, we know people come behind us, and we need to write it in such a way that it makes sense or they can change it.

Mr. Marcom noted the Planning Commission has to approve this development anyway, so I don't care where it is. If it's a $60 million or $75 million project and the Planning Commission approves it, then it's okay.

Mr. Ross stated we know as a City and the Industrial Development Board, we have to think more strategically about how we grow up, since we can't grow out if that's the mission and vision of this policy: to develop smarter and encourage those types of things. The economic development policies encourage investment in key commercial areas.

Mr. Vosburg asked if in 4.3 if we could change the third sub bullet of the first sentence to say "key commercial areas" rather than those parcels located within the smart code.

Mr. Marcom asked if in the key commercial area, would the T-4 triangle piece be smart growth?

Mr. Ross answered yes.

Mr. Lawton said it's that sentence that says the project must be located within a smart code area. You are saying change it to "those parcels located within key commercial areas".

Mr. Harless asked did we answer the question regarding the project? I'm thinking of TraVure phases 2-3-4 between these three projects. Can you have a $75 million project joining a $60 million project?

Mr. Vosburg noted that is one of the reasons it was pushing us toward the $75 million instead of the $50 million. If you had the Gill property and the Fogelman property both developed.

Mr. Harless stated I'm talking about the Gill property, and if there are three projects such as the hotel, office, and retail. Could that be counted as three projects or one project?

Mr. Jones stated according to code, you have a choice. In the financing agreement you can call it one project and require all phases be built and then it starts. Or you can say after phase one is complete, this amount gets disbursed and so on with phase two and phase three. You can break it up on phases.

Chairman Evans noted that brings us back to the dollar amount, and if you break it up, none of the three may individually reach the dollar amount.

Mr. Jones stated when you define completion for disbursing proposes.

Mr. Marcom noted the hotel phase and the office retail phase wouldn't work. I don't think they get to those thresholds. You've got to have the office building and the garage to get up to that big threshold.

Mr. Vosburg asked if we are talking about just the hotel phase and then it stalls out at that point. We don't really want to be involved in a TIF on a hotel sitting there. It's not worth it.

Mr. Saunders asked Mr. Jones that if we are looking at the whole project as being total of $90 million and it broke down as $30 million for the hotel and $50 million for the office and $10 million for the retail. We grant a TIF for the total project for $90 million and under that agreement we are saying that you have to have certain things completed before the TIF is paid out. So, either the office has to be completed or in the event the thing that got built was the hotel, then TIF would not be put in the phase.

Mr. Jones answered you would have to look from the beginning to make certain the hotel by itself gets completed. They call that phase one, and you say that's not going to be enough. You wouldn't allow distribution in phase one. The hotel ends and the parking garage must be completed. That's going to be for distribution purposes.

Mr. Vosburg stated one of the advantages of $75 million is it puts it beyond the range that a hotel alone can reach, and what you're saying at that point is the hotel, office, and parking garage would have to be completed for us to consider distribution, and maybe the retail piece could be done later.

Mr. Lawton stated when it's done, appraised and generates property taxes, that's what we'll capture until all that is done. We will know that in the finance plan. Does the hotel generate enough revenue to support retirement of the loan? We should know that early on.

Mr. Saunders stated we require them to put that together and bring it forward.

Mr. Vosburg stated what this means is the developer is almost certainly going to have to put bridge financing in place to cover that period of time.

Chairman Evans stated for 4.6 we need to put in the number. The number will be put $60 million plus $5 million for infrastructure.

Mr. Saunders stated those two being the threshold that we consider the TIF.

Mr. Dent asked do we have any data or are we expecting any feedback from some of the people I put you in touch with on those amounts or limits? I feel like we are tossing out random numbers here. I like data driven decisions, personally.

Mr. Ross stated they indicated that we will be getting feedback. I'm not sure when that will be coming. In that discussion, there were talks of what banks' lending capacity is set at. We discussed that they're going to break that up anyway. Nobody wants to take on the full burden of the loan.

Mr. Marcom asked what the bond rating agencies feel about TIF's and limiting our potential income in the future?

Mr. Lawton answered this is not on the City books in terms of overall bonding and it doesn't show up when we look at what our debt capacity is. It doesn't impact our rating in that regards if we do TIF bonds or private financing. But your point, Mr. Marcom, about how much of the incremental is used and how much is absorbed with debt overall, that's one of the reasons we will have PFM looking at these projects as they come forward. One of the reasons roman numeral 11 is in there, is to help us get a better understanding. Yes, we are giving this up in the tax incremental, but look what we are gaining in return and it covers our associated cost. We should be fine. It won't impact our credit rating. It's not on our books, and we are not responsible if the project goes belly up.

Mr. Vosburg noted 4.2 which said that 25% we are keeping for the first ten years and 40% if it runs the whole fifteen years. This is not amenable to an extension TIF, if you will. Unlike a PILOT, this doesn't happen.

Mr. Lawton stated we will see when they meet with us and go through the surveillance report they call it now. They look at our Long Range Plan and our overall debt. They are more concerned about our debt and ability to pay our debt.

Mr. Ross stated on 4.2, as it is written right now, 75% of those having a term of 10 years or less and 60% for those having terms in excess of 10 years or the maximum term being 15 years. It was pointed out at the work session, unless specifically directed to do so by the BMA, 4.1 is the fifteen years.

Ms. Lisco noted the other proposal presented at the work session was a maximum of 75% of the incremental tax revenues for TIF transactions for the first ten (10) years of any approved TIF transaction, and a maximum of 70% for any remaining years in any approved TIF transaction having terms in excess of 10 years.

Mr. Vosburg noted a step function as opposed to a choice on the front end.

Chairman Evans stated with the language still in there, is that something you are still comfortable with? Do you want to alter that language? Mr. Ross, is there anything else we need to address tonight?
Mr. Vosburg noted I'm good with this. The other thing was regarding the fee, and I think that change was good.

Mr. Ross stated I think this captures almost everything.

Mr. Harless noted there was some discussion at our last meeting about the makeup of the review team and it's not identified in the write up. The team has to be separate from the City.

Mr. Vosburg asked so it can't just be City staff; it has to have some members from this committee or some consultants.

Mr. Ross stated it has to be appointed by this board.

Chairman Evans pointed out that one of the criteria that the auditors raise is that we have to demonstrate that we, as a board, are separate from the City….that we're not under the City's management. By having the team created or appointed by the IDB chair, it creates that differentiation. However, Mr. Harless raised the point that once again, that if we all get run over by a bus, someone else comes in and appoints a friend because there's nothing identified in here, as to what the board should consist of. So I think there's some language that should be proposed that is general enough to still keep them separate while specific enough to get us out of the gray area.

Mr. Vosburg asked should they be appointed by the entire IDB, as opposed to by the chair?

Chairman Evans answered it says appointed by the chair, and approved by the IDB.

Mr. Harless stated that I would propose the following language: the team might include, but not necessarily be limited to, a member of the IDB, legal counselor, financial advisor and/or City staff members from Economic & Community Development, Administration, and Public Works.

Chairman Evans explained that the meeting this evening is to consider an acceptance of the TIF policy.

A motion was made by Mike Harless, seconded by Keith Saunders, to approve acceptance of the TIF policy as amended tonight.

John Elkington at 3082 Devonshire Way stated I have done five TIF's in business improvement districts, and I think these are about impact projects that change a community. Based on the discussions he's heard, he:

- Suggested language needs to be added about parking structure.
- Suggested 15 years increase to 20 years.
- Has concerns about 4.9 and 4.10.

Chairman Evans asked Mr. Elkington about his experience with TIF's in Nashville, since they do not have a policy in Nashville. Birmingham is basically a sales tax TIF. Have you worked in cities with property tax and phasing that we are talking about?

Mr. Elkington noted that with property tax TIFs', you usually can't generate enough money. It has to be really huge properties.

Chairman Evans asked if Nashville does phasing that we discussed here tonight?

Mr. Elkington stated they do phasing where we don't have wait till the end of the project for disbursement. Most projects are not single purpose TIF's. They do multiple projects. They are growing fast in Nashville. We are doing a TIF in Birmingham right now, and we are hung up on a fire station about who is going to pay for the fire truck.

Mr. Saunders stated if you are saying you feel like that about the property tax, I can agree with you, as far as the TIF is concerned. You are looking at a major investment into the infrastructure about $20 million and you want that to be the point for TIF to start paying that off sooner than later. Once the infrastructure is in place, is the value of the property going up?

Mr. Lawton answered probably not enough to support whatever debt is there for the public improvements.

Mr. Saunders asked would that be something you use for basis of release and starting of distribution?

Mr. Elkington stated he thinks the issue is once you start the first phase and say you have a three phase project, where you built a hotel, infrastructure, and then an entertainment venue at the same time, if you have to wait until it's all completed (which could be three to five years) that seems an unfair burden. You would have to put up a letter of credit, but on this type of bond it would have to be more than a letter of credit. Only big companies could do this.

Mr. Vosburg stated if you get to the first phase, when that hits the tax rules, then you have an increment which could be deferred to use to help deal with the debt that was put in place for the infrastructure that is serving the first phase. That's not going to be enough money for the infrastructure. You will still have some bridge financing, until you get further down the line.

Mr. Marcom stated based on John Elkington's comments, I feel like I need to remove myself from these discussions. We had maybe an hour long meeting, one day several months ago, with Mr. Elkington on a project. I didn't realize at that point they might consider a TIF. We have been involved with one of his properties in the past. So, with that being said, I'm going to recuse myself.

Chairman Evans stated we need more research and input than just to plug something in to this document tonight.

Mr. Harless noted that Mr. Elkington has given us some pause and some good input. I appreciate it. I think taking time to do it right on the front end is best.

Mr. Vosburg noted we should strongly consider a longer term; think about a mechanism for phased funding, and parking structure with stronger language.

Chairman Evans said to Mr. Lawton and Mr. Ross that I think what we need to do tonight is go back to a study process. Let's try and come with recommended language, specifically on these three points that have been raised.

Mr. Harless asked to rescind his motion.

Chairman Evans stated the motion is withdrawn.

Chairman Evans asked if there was any other business to come before us tonight.

ADJOURNMENT