

INDUSTRIAL DEVELOPMENT BOARD
Tuesday, January 10, 2017
Blue Conference Room
Department of Economic and Community Development
1920 South Germantown Road

The Germantown Industrial Development Board met on Tuesday, January 10, 2017, in the Blue Conference Room. Chairman Henry Evans called the meeting to order at 4:00 p.m. A quorum was established with the following members present.

PRESENT: Chairman Henry Evans, Dick Vosburg, Keith Saunders, Julie Klein, and Mike Harless

ABSENT: Daniel Dent

GUESTS: Murray Foster, Evans Woodward, John Elkington, Tom Fisher, Scott Stringer, and Justin Starling, Attorney with Bass, Berry, and Sims PLC

STAFF: Cameron Ross, Economic Community Development Director; Patrick Lawton, City Administrator; Andy Jones, IDB Attorney; Marie Lisco, Economic Development Manager, and Pam Rush, Senior Administrative Assistant

Mr. Evans stated the next item is approval of the minutes from our December 7, 2016, meeting.

MINUTES

A motion was made by Keith Saunders, seconded by Mike Harless to approve the December 7, 2016, minutes. The motion passed.

Chairman Evans stated the next item is consideration of the Germantown Tax Increment Financing (TIF) policy. Those of you who are guests and Board members are probably aware that we have been looking at this policy development process for the last year. We have made changes along the way, but we are to the point where we need to get this approved tonight. The important thing to remember is that this policy, once approved, is written on paper and is not being carved in stone. As things unfold, if we decide there are additional things that we need to consider, we as the Board have the option to do that. So, at this point and time, what I would like to do is to have a motion to put the policy approval on the table and then we will open it for discussion.

Mr. Lawton stated the Board had an opportunity to look at the application process and everything associated with the TIF program. The last version of the TIF policy that Andy Jones submitted to the Board before the holidays with changes that were identified by City staff and the IDB members have all been incorporated in the (blue) language.

Andy Jones stated that he is just going to work his way through the changes as part of presentation. There are a couple of smaller changes that are simply clarifications such as on page 2 to make clear that what we are doing here is for the City of Germantown and we are not in any way binding the County to our policies. In section 2, second paragraph, that language is simply to be more correct as far as all the acts that encompass TIF financing.

There are two changes in section 3.1: the first one is more directly tied to fees we are trying to collect from the applicant. As for any pre-application meetings, we would only be out actual expenses we incurred during that time. The second one is the bigger change here. The first option would be that prior to submitting an application, the applicant must receive a minimum approval of the outline plan of the project from the City Planning Commission. The second option would be that the applicant could submit an application at anytime, but the IDB would not look at it until the Planning Commission had approved.

Mr. Jones asked the IDB which change they preferred.

The IDB agreed to the second option.

On section 3.3, there's a small change to make sure it's clear that the IDB will only look at IDB eligible projects.

On page 4, there are some changes centered around multiple phases. Some developers have more than one phase, so we have gone through and added some language that will allow each project to have multiple phases.

Mr. Harless asked if submitted by phases, do developers have to submit separate fees? So, if there were four phases, we would have to approve all four phases, before they could start on phase one?

Mr. Jones answered no; it's one application. The question would be how do you allocate the TIF financing to each phase and the Board would approve all phases at once. The Board would approve the whole project. There would only be one application, and it would have all four phases on it. So, yes, you would have to approve all four phases, but they wouldn't have to start all four phases. They could start phase one, and once completed it would allow them to get TIF financing. Then, they could start phase two which has already been approved by the Board and get TIF financing for that upon completion. On page 4 section (x) the "anticipate" was added to terms and conditions of any and all financing of the project.

Mr. Ross noted, in essence, they would have their TIF financing phase agreement in place, and then work through the Planning Commission and construction plan approval process, on a per phase basis.

Mr. Vosburg stated as things change, as they are undoubtedly likely to do with phases, they would come back with the changes that affect the TIF.

Mr. Jones noted the changes on the bottom of page 4. Flexibility was added with *the IDB may grant additional time to submit the proposed economic impact plan, in its sole discretion, upon written request, prior to the expiration of the 120 day term, by the applicant. On page 6, 4.1 the maximum term was changed from 15 to 20 years as well as the role of the state in 30 year TIF's.*

Changes were made on these items listed below:

In section 4.2, flexibility was added for the percentage allocated.

Section 4.3, was modified to address multiple phase projects in a Plan Area.

Mr. Harless asked is there any cap that says it can't be greater than or less than?

Mr. Jones answered there is no less than.

Mr. Ross stated that 75 percent is the cap by the State statute.

Mr. Jones stated on section 4.5 Public Infrastructure that private and public off-street parking improvements and structures are included. On section 4.6 Notice to Property Owners, we changed it to 500 feet of the plan area to match commission notice requirements. We removed (ii) on recording to the register of deeds office because the City of Germantown doesn't do that.

In section 4.7, flexibility was added to the TIF project amounts.

Section 4.8, Shelby County TIF Approval, "until such time as such approval has been obtained" was added.

Section 4.10, was modified to address disbursement on multiple phase projects.

Section 4.13, was added regarding approval for multiple phase projects. As well as the amendment or modification of the TIF policy by the IDB.

Mr. Harless asked if there is a situation where you could have two phases and phase one is 95% complete, but can't be completed, because it ties into phase two in such a way phase two has to be 50% done before phase one can be completed? If so, does that mean that the developer can't get their money?

Mr. Jones answered the way it is worded right now, the phase has to be completed.

Mr. Vosburg noted the importance of defining the phases on the front end so they make sense.

Mr. Harless stated that it would be to their advantage to make sure that they have a cutoff which is reasonable and not effected by things.

Ms. Lisco stated that this protects the City as well so you don't end up with an unfinished project. You've got a project that has closure.

Mr. Saunders noted if you have a phase that extends onto another parcel, is it possible to pull that out of that parcel and start with the next phase?

Chairman Evans stated you can't create a policy that applies to every situation across the board. There will always be gray areas. What we've got to do is develop the policy, and I think this does, that protects the City of Germantown and gives proper notice to the developer going in on what they've got to meet.

In section 4.14, Public Infrastructure has a new provision to clarify that public infrastructure improvements remain the property of the applicant.

Mr. Harless asked if there is insurance coverage for all Germantown commission members and boards? What is the estimated lead time for the developer coming in and following our flow chart? How long do you think it will take for a developer to get an answer as to whether or not they are going to receive approval for a TIF? We have become much more business friendly, so I applaud the fact that we want to parallel this process with the development process. It's a benefit for the developers, because it's their money and time.

Mr. Lawton answered, yes, we have that under our liability insurance with the City.

Chairman Evans asked did you verify coverage if we are a separate 501(c) 3?

Mr. Lawton answered, yes. I talked with our Risk Manager today, and she reached out to our insurance provider and everybody is covered.

Mr. Lawton discussed the timing of a TIF application in relation to a Planning Commission submittal. The Review Team can start once the notice of intent is provided by the BMA. The resolution would be the point in time when we would start the conversation at the State level.

Mr. Vosburg asked if it does require State approval, if it is within our review, if materials are provided on a timely basis, and if it is approved at the Planning Commission right away, this sounds like 120 days is more than plenty. It should be sufficiently less than that.

Mr. Lawton stated that as the policy is written, we would be able to take the Economic Impact Plan earlier than that.

Mr. Ross stated at the time of application.

Mr. Vosburg stated if it meets everything, it could be 60 days from the Germantown point of view.

Chairman Evans asked if anyone in attendance would like to speak:

Justin Starling stated that we have been following the TIF policies because we have a number of clients who are interested in using TIF's in Germantown and the Memphis area. As you know, in other parts of Tennessee TIF's have been used very widely, but until recently they haven't been used in Shelby County. We have reviewed these policies and have a couple of questions and concerns. This policy does not allow disbursement of any TIF funds until the project is complete. I think it's important to keep in mind the way the funds are financed are where you have third party lenders, the bank, to come and basically make a loan to the developer. However, it's usually the same lender that is doing the construction financing for the project, and they view the payment as the TIF rather than the developer budget. They want to get paid at least interest during the construction period. The way they normally work in the State is the development agreement will provide the payment from the TIF funds which will be made in accordance with the loan documents from the TIF money.

Chairman Evans said that we have been down that road many times in our discussions here. We have allowed phases, and that is one way in which a developer can provide some funding to themselves by putting the project in phases.

Mr. Vosburg asked what is the source of funds, if you don't have a completed project...in case you don't have a TIF yet? Is that City funds?

Mr. Starling answered no. It's the third party lender's money, which has gone in to fund improvements. As the project generates increment and money comes into the fund, it goes to pay back the bill. So the increment is going to the designated fund for the project, and none of that money can come out until it's completed. The baseline year for the taxes is the year before you approve the Economic Impact Plan. Say there was a project that was going to start in late 2017, and you approved the plan in 2017 based on the taxes from 2016. There could be an increment automatically through the reappraisal process or an increment as improvements were made. So the value of the property goes up, even if the project is not complete. The third party lender is going to want to get paid interest, at least, for all the time their money is out at risk.

Mr. Vosburg noted there's nothing going in until it's completed. It's not on the tax rolls; there's no TIF.

Mr. Lawton noted with the private financing you have that bridge money coming in to support that loan payment, during that period of time. The issue that we have is, in looking at an IDB TIF bond, there is no increment until the property is assessed. There is no form of revenue that's coming in. Our Finance Director will send the tax bill, but only a portion of it, and the rest is going to retire debt. There is no money if you do a TIF bond. What you are talking about is private financing where they come to get money available to take care of those improvements until the TIF revenue is available.

Mr. Saunders asked are we not only looking at putting up the collateral for that advancement by the private source, as far as getting that interest paid as it's drawn out? Then, that should be taken in consideration for how you make a payment, not the increment taxes. The taxes we are looking at is giving that private lender security to loan the developer the money up front with the understanding that the bonds will pay that back. We become a lender if we pay it out in increments to pay the interest off. That is something the private lender has got to take into consideration.

Mr. Vosburg stated not until it's completed, and it's been assessed and added to the tax roll. If you get the tax parcels changed, such that you have two separate parcels matching the two phases, the one that is the

first phase, if it's finished, could be paying out while the second parcel and phase are in progress. I see it under the developer control.

Mr. Starling noted if we you have a multiple year project, the tax increment will get paid into the fund each year, when taxes are normally paid. So the money is sitting there, and it's available for payment of projects on track. The lender is going to want to get paid. That's going to make it harder to find third party lenders to do the deal.

Chairman Evans stated the phases have got to be finished. If it's a single phase, the project has got to be finished.

John Elkington asked if you assemble property and there were six different pieces of property, all having different parcels, and you wanted to combine some of those, you would have to change those parcels into a new parcel, so you have to get it subdivided? They may not match up according to your development plan. What is your baseline tax revenue for the TIF?

Chairman Evans stated that's why we require you to go to the Germantown Planning Commission before it ever comes to us.

Mr. Saunders answered I would think the subdivided property would be your baseline. If you took three pieces of property and put them into one, the baseline would be the value of those three together.

Mr. Ross showed an overview of the different phases on the Thornwood project at Neshoba/Exeter and Germantown Road and how it could relate to a TIF.

Mr. Lawton stated when we do the review of the Economic Impact Plan, we will see and understand that. Then we will have a better idea of what is based on that, and what can be generated from the new assessed value to support whatever size bond is necessary. I don't see the IDB projects going out multiple times to the market. I could be wrong for a TIF bond. The project itself going out for whatever the size, the issue is one time. It's demonstrated to whoever is going to buy these bonds that there was sufficient increment from the phases to come and pay it off.

Mr. Starling asked about the definition of Public Infrastructure included in the policies. What's listed here largely follows what is allowed by the State law, but not exactly. I think the State statute is broader in some respects. I don't know if Germantown wants to limit itself on what it can do to stand by its economic development below what the state would allow. Your policy needs to be what you can use TIF revenue for, whatever the state statute says. You're not limiting what you can do, and if the state law changes. It's in sections 4.4 and 4.5.

PROPOSED MOTION 1: To approve the Germantown Tax Increment Financing (TIF) policy.

A motion was made by Mike Harless, seconded by Dick Vosburg to approve the Germantown Tax Increment Financing (TIF) policy as discussed. The motion passed.

Chairman Evans asked if there was any other business to come before us. There was none.

ADJOURNMENT