

INDUSTRIAL DEVELOPMENT BOARD
Tuesday, February 7, 2017
Administration Conference Room
1930 South Germantown Road

The Germantown Industrial Development Board met on Tuesday, February 7, 2017, in the Administration Conference Room. Chairman Henry Evans called the meeting to order at 5:00 p.m. A quorum was established with the following members present.

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

ABSENT: None

GUESTS: Alderman Dean Massey

STAFF: Cameron Ross, Economic Community Development Director; Patrick Lawton, City Administrator; Andy Jones, Industrial Development Board Attorney

Mr. Evans stated the next item is approval of the minutes from our January 10, 2017, meeting.

MINUTES

A motion was made by Mike Harless and seconded by Keith Saunders, to approve the January 10, 2017, minutes. The motion passed.

Chairman Evans asked what is the date correction on the August 29, 2016 minutes?

Mr. Ross stated in the August 29, 2016 minutes, reference was made to a presentation that was given on August 18, and actually the meeting occurred on August 17. It caused a little bit of confusion, so for the permanent record, we just wanted to make sure that was corrected to the proper date. The Industrial Development Board work session was held on August 17.

A motion was made by Juliet Klein, seconded by Daniel Dent, to approve a date correction to the August 29, 2016, minutes. The motion passed.

Alderman Dean Massey asked to speak before the meeting started. Alderman Massey stated he had been going through the Industrial Development Board minutes, by-laws and state statutes pertaining to the Industrial Development Board in preparation for the Board of Mayor and Alderman Retreat that will be held this Friday. He came across some language that he wanted to discuss. Alderman Massey stated:

“That’s why I am here tonight and respectfully before this Board. Particularly for Chairman Evans and Mike Harless, I know the dedication that you have given to this Board and to the City. It’s difficult for me, as a new Alderman, to be here and have this conversation with you. The reason I am here is I think we need to consider the possibility of postponing tonight’s meeting and to enlighten some as to information that I have come across. I believe multiple members of the IDB have been serving as officers of the municipality, which is precluded by Tennessee Code 7-53-301, which states, “No director shall be an officer or employee of the municipality.” Germantown Code reads, “Officer shall mean the Mayor and any member of the Board of Mayor and Alderman in any appointed member of a Board, Commission or Committee establish by ordinance, charter or state law.” Now in this particular incidence, we know that we have members of the Planning Commission and it’s established by state law. So, I don’t think there’s any question that the Planning Commission members serving on the Industrial Development Board would qualify as officers. I personally believe that the way the code is written and the statue reads is that any member of the Industrial Development Board who also serves as a member of a commission would be precluded from serving as a member of the Industrial Development Board. The question is how we treat all the meetings that we held previously, how we treat tonight’s meeting, and any meeting going forward, if that’s the case. What I am suggesting is that until this is resolved; this Board, knowing what we know tonight, should postpone any future meetings. It’s an issue that has to be addressed at State Statute, not

something the Board of Mayor and Aldermen has control over. I think the language is pretty clear. I am sorry to bring this to you, and I hope you will forgive me. Chairman Evans, I think when you were quoted by Jane Roberts in the Commercial Appeal in 2015, she credited your wisdom by referencing the comment you said, "The citizens have to follow the rules". That is one of the reasons I was elected to go over the rules and make sure we are following them".

Chairman Evans stated the Industrial Development Board attorney Andy Jones will look into the matter, and that the Board has been constituted this way for 16 years since (2001) by the Board of Mayor and Alderman. Chairman Evans further stated that if in fact that the makeup of the board was to change he believed that has to be done by the Board of Mayor and Alderman, and that the current IDB members did not have the power to make that judgment. Further Chairman Evans pointed out that if you take the position of a person that's elected to the IDB is an officer, then once someone is elected to the IDB, they would be immediately be disqualified from serving by reason of being an officer of the City. Alderman Massey agreed.

Mr. Jones asked where Alderman Massey was quoting the definition of officers from?

Alderman Massey stated the Statute does not define officers, but if you look to the City code, it does define officer, which shall mean, "The Mayor and any member of the Board of Mayor and Alderman and any appointed member of a Board, Commission or Committee establish by ordinance, charter or state law."

Mr. Jones answered I think we have to look at the definition of officer in the state code. If officer is defined in the State Code, it will supersede Germantown by-laws. Mr. Jones agreed with Mr. Evans that it would be difficult to serve on commissions with that interpretation of the statute. Mr. Jones additionally stated that there is an Attorney General's Opinion that's addressing the second issue. The Opinion holds if you have an Industrial Development Board member who is later found to have been precluded from being a part of the meeting, and that individual has previously voted on items, their previous votes are valid.

Chairman Evans asked if there was any motion to postpone tonight meeting? If not, we will continue as we are.

IDB ELECTION OF OFFICERS

Mr. Evans declared the floor open for nominations for Chairman.

Mr. Harless nominated Mr. Evans for Chairman. Mr. Saunders seconded the motion.

Mr. Evans asked if there were any other nominations. There were none. He said he would entertain a motion that the nominations cease.

Since there were no objections, the Commission members voted unanimously to elect Mr. Evans as Chairman.

Chairman Evans stated he would entertain nominations for Vice Chairman.

Mr. Vosburg nominated Mr. Harless as Vice Chairman. Mr. Saunders seconded the motion.

Chairman Evans asked if there were other nominations. There were none. He asked the nominations cease and that Mr. Harless be elected by acclamation.

Since there were no objections, Chairman Evans asked for a roll call.

The Commission members voted unanimously to elect Mr. Harless as Vice Chairman.

Chairman Evans then asked for nominations for Secretary/Treasurer.

Mr. Harless nominated Mr. Vosburg for Secretary/Treasurer. Mr. Saunders seconded the motion. Chairman Evans asked if there were other nominations. There were none.

Chairman Evans moved that the nominations cease and that Mr. Vosburg be elected by acclamation. Since there were no objections, Chairman Evans asked for a roll call.

The Commission members voted unanimously to elect Mr. Vosburg as Secretary/Treasurer.

Chairman Evans stated the next item on the agenda is Termination of Real and Personal Property lease agreements with ThyssenKrupp Elevator Manufacturing.

Mr. Jones stated this is the old lease not the retention lease that was voted on in June of last year. The lease was terminated by its terms on December 31, 2016, but technically, the Industrial Development Board has to vote upon terminating it, and return the personal property to ThyssenKrupp Elevator Manufacturing. The Personal Property will be returned to ThyssenKrupp Elevator Manufacturing. The Real Property is still a subject of Retention PILOT, so it just rolls over into that.

Mr. Harless stated he was a former employee of ThyssenKrupp Elevator Manufacturing up to 2009, so should he be recused?

Mr. Jones answered yes; since you didn't vote on the Retention PILOT, let's recuse on this one, also.

Chairman Evans asked Mr. Jones should Mr. Harless recuse himself on the next one as well?

Mr. Jones answered no; it does not effect, because it's not technically ThyssenKrupp Elevator Manufacturing.

Chairman Evans asked if there were any questions for Mr. Jones on the termination? This is the original lease and it expired December 31, 2016. Does the resolution you have, authorize me to sign these documents?

Mr. Jones stated ThyssenKrupp Elevator Manufacturing had 180 days after the termination to request the property tax. It states they will negotiate these documents, and it will be effective on them paying all the fees that they owe which will be my fees and the termination fee, totaling \$1000.

Chairman Evans stated a motion was made by Mr. Vosburg, seconded by Mr. Saunders to adopt the Resolution of Termination of Real and Personal Property lease agreements with ThyssenKrupp Elevator Manufacturing. The motion passed.

Chairman Evans stated the next item on the agenda is consideration of ThyssenKrupp Elevator Manufacturing lease assignment.

Mr. Jones stated the owner of the property is Highwood's and they are selling the property to Unquowa Place Partners 50, LLC. I believe that is a Delaware entity, and technically the Board's approval is not required for this assignment. The PILOT was to ThyssenKrupp Elevator Manufacturing, not Highwood's the real property owner. However, the lender and Richard Score requested Industrial Development Board approval because they wanted the IDB to be aware of it happening. We will sign a deed of trust transferring the property into a deed of trust, and there is a loan associated with this sale, it's a \$9 million

loan. The signing does not affect any requirements of ThyssenKrupp Elevator Manufacturing, or any of their capital, contribute, workers, and employees. It's a simple change of ownership of the landlord.

Chairman Evans asked is there an effective date we need to be aware of?

Mr. Jones answered they are hoping to close on February 17, 2017.

Mr. Dent asked does this expose us or give us any increment risk?

Mr. Jones answered in the documents, where there is an issue to the lease prior to their closing, the previous owner is responsible; so, if there is a problem after this, the new owner is responsible. The document requires ThyssenKrupp Elevator Manufacturing to abide by all terms, and there is very little involved with the actual owner of the property.

Mr. Harless stated in the past Highwood's, as the owner of the property, has been involved with maintaining some of the roof and outside landscaping. Who would we go back on, if it was not maintained?

Mr. Jones answered our lease requires ThyssenKrupp Elevator Manufacturing to maintain the property. In the lease with ThyssenKrupp Elevator Manufacturing and Highwood's, the owner is required to maintain that.

Chairman Evans stated he thinks Mr. Harless's point is are we protected and to make sure that building stays maintained.

Mr. Jones stated our PILOT lease requires the building to be useable and maintained in good working order. Our first step, if it was not maintained, would be ThyssenKrupp Elevator Manufacturing the PILOT holder.

Chairman Evans stated a motion was made by Ms. Klein, seconded by Mr. Saunders to consider the ThyssenKrupp Elevator Manufacturing lease assignment. The motion passed.

Chairman Evans stated the next item on the agenda is Termination of Real and Personal Property lease agreements with West Fraser.

Mr. Jones stated the West Fraser Germantown PILOT ended December 31, 2015, and Shelby County ended December 31, 2016.

Chairman Evans stated even though our PILOT expired in 2015, we have a responsibility to monitor for Shelby County through 2016. So, therefore, we couldn't actually terminate the lease until the end of the Shelby County PILOT.

Mr. Harless asked how many employees does West Fraser have now? He also asked what their future was here in Germantown? Do they have plans to continue to grow?

Mr. Ross answered we are working with Mr. McLaren to set up a meeting.

Chairman Evans answered they are in compliance with the number of employees.

Chairman Evans stated a motion was made by Mr. Harless, seconded by Mr. Vosburg to approve Resolution of Termination of Real and Personal Property lease agreements with West Fraser. The motion passed.

Chairman Evans stated we have two groups of people we need to appoint this evening. If you remember in our policy, we provided for a Pre-Application Team. This would be a team that will meet with an applicant regarding a TIF; prior to the time they actually submitted an application. It is a committee that would talk to them regarding the process of getting a TIF approved. It has nothing to do with actual finance arrangements. At this point, there should be a member of the Industrial Development Board who sits as a member of that group in the meeting itself. We also decided that it would be in our best interest to appoint, based on a title as opposed to an individual name. So, if people left the job, we would have to come back and have another meeting in order to reconstitute the team. Our recommendation to you on the pre-application team is as listed: Director of Economic Community Development, Economic Development Manager, and Legal Counsel serving for the Industrial Development Board, and the Industrial Development Board share or designee.

Chairman Evans stated the four appointees for the Pre-Application Team by title would be Chairman of Industrial Development Board or designee, Director of Economic Community Development, Economic Development Manager, and the Legal Council of the Industrial Development Board.

Chairman Evans stated a motion was made by Mr. Harless, seconded by Mr. Saunders for selection of the TIF Pre-Application Team. The motion passed.

Chairman Evans stated the recommendation for the appointment of the Industrial Development Board Review Team, and referred again to the policy statement authorizing the chairman to appoint the committee with IDB approval. This is the group that will roll up their sleeves, and getting hands on involved in the nuts and bolts of the application itself, and the Economic Impact Plan. So in this case, once again, the suggested persons would be the Chairman of Industrial Development Board or designee, City Administrator, Director of Economic Community Development, and Economic Development Manager, a designee of the City Budget Finance Analyst Division, a designee of City Finance Department, and a designee of Public Financial Management Financial Advisors to the City, and the General Council of the Industrial Development Board.

Mr. Harless stated it needs to be a manageable group, so how many are there?

Chairman Evans stated there are eight counting the General Council of the Industrial Development Board.

Mr. Saunders asked if it would be necessary to budget a person to be there at all times? That is something that comes about, once you start getting all the information together, where they can start doing the analysis.

Mr. Lawton stated I think it's good to have them up front, and the size of the group is manageable.

Chairman Evans asked Mr. Lawton so the seven people and the General Council will be those people who will actually make voting decisions, on the TIF application, as it goes forward. Once we designate them actually in that committee for voting on whether are not, they will recommend it to us.

Mr. Jones stated that is not correct; they determine whether the application is complete, and once it is complete, they present it to the Industrial Development Board. They do not vote on the TIF application.

Chairman Evans stated a motion was made by Mr. Vosburg, seconded by Mr. Saunders for selection of the Industrial Development Board Review Team. The motion passed.

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

ADJOURNMENT