

INDUSTRIAL DEVELOPMENT BOARD

April 21, 2009

The Germantown Industrial Development Board met on Thursday, April 21, 2009, in the Administrative Conference Room. Chairman Henry Evans called the meeting to order at 5:30 p.m. and stated this was a called meeting of the Germantown Industrial Development Board for the purpose of amending the Charter. A quorum was established with all members present.

PRESENT: Chairman Henry Evans, Mike Harless, Don Lee, Annette Liles, Frank Markus, Keith Saunders and Dick Vosburg.

STAFF PRESENT: City Administrator Patrick Lawton, Assistant City Administrator Andy Pouncey, Economic Development Coordinator Katie Graffam and Laurel Williams, Attorney, Burch, Porter & Johnson

MINUTES

A motion was made and seconded to approve the March 5, 2009 minutes. Motion passed.

COMMENTS BY CHAIRMAN EVANS (Verbatim)

This meeting was called for consideration of an amendment to the charter of the Germantown Industrial Development Board. When this Board was created in 2001, it was created with a limited charter in that we do not have the full power and authority; it is granted to the Industrial Development Board by the State of Tennessee through the enabling legislation. Subsequent to the Board of Mayor and Aldermen adopting a public policy regarding development, it became apparent that we needed to revisit our charter. As we look at the Public/Private Partnership Policy the City has adopted, it creates the option for certain public financing alternatives. Two of those financing alternatives are tax increment financing bonds and a second one is special assessment bonds. The authority to issue those bonds by the Industrial Development Board is provided for in the state law, but because our charter was drawn in a very limited way we do not currently have the authority to issue those bonds with this Board here in Germantown. So tonight in order for us to consider the amendment to our charter, we want to look at the possibility that at some point in the future there may be a need under the City's Public/Private Partnership Policy to ask this board to issue one or both of those types of bonds.

This is the fourth meeting, I believe, over the last year, in which this board has visited the tax increment financing revenue bonds and also the special assessment bonds. We have understood that tax increment financing bonds are a unique revenue bond that establishes a base property tax level for undeveloped property and then once the property has been developed, the incremental tax that is added to that value of that property is carved aside and is used to pay off the debt service on the bonds. The City will continue to receive the base level property taxes on the bonds, but for the duration of the maturity of the bonds, which under our Public/Private Partnership Policy will be 15 years, the incremental increase on those taxes will be used to pay off the debt service. Special assessment bonds are also revenue bonds, but they are special assessment revenues that are created on a development when the Board of Mayor and Aldermen determines an amount of the assessment to be levied against property owners within the boundaries of the development. Those assessments will not apply to other taxpayers in the City nor to any taxpayer outside the described development project.

It is important to note that on both of these revenue bonds there is no risk to the City of Germantown. There is no full faith and credit of the City of Germantown that is pledged to the repayment of these bonds. They can only be issued by the Industrial Development Board in either case after the Mayor and Board of Aldermen have determined that a project qualifies for the issuance of the bonds, has had a public hearing to hear from the public regarding the potential issuing of bonds, and then has taken action to officially request the IDB to issue the bond and has literally set an amount for the bond issue itself. It is also important to note that these bonds are sold to institutional investors. Institutional investors are those investors who have the experience in investing and purchasing these types of bonds and have their own research capabilities to assess the risks that may be associated with the issuance and is therefore the purpose of these bonds. Any risks assumed as a result of these bond issues are totally in the hands of those who purchased the bonds. The City of Germantown serves then as the conduit through its Industrial

Development Board to issue these bonds and to set up a trustee who will actually receive the proceeds and disburse the proceeds secured to pay for the bonds.

Having said all that, we do need to have a presentation made on the resolution that is before us tonight and then following the presentation of the resolution we will open the floor to discussion by the IDB members to clarify any questions that you may have about 1) what we're here to do tonight, or 2) about either of the bonds that we've just talked about. Once we get a motion on the floor, then we will have the public hearing so that persons in the audience might come forward to address the issue that is before us tonight. We will have a time limit on those comments from any one individual of three minutes and I will ask you to confine your comments to the issue that is before us tonight and that is whether this board should apply for an amendment to its charter to bring our authority within the same scope of that which is already provided for by the State of Tennessee. We're not here tonight to talk about the Public/Private Partnership Policy that has already been adopted by the Board. We have no authority to do anything regarding that policy. We're not here to talk about any particular development that may or may not come about because we have nothing to do with any of those developments. All of those will ultimately go to other board and commissions, specifically the Planning Commission, perhaps the Design Review Commission and the Board of Mayor and Aldermen.

Chairman Evans then asked for a presentation by Laurel Williams, attorney for Burch, Porter and Johnson.

Presentation by Laurel Williams

Ms. Williams stated she would summarize the proposed charter amendment on the floor to be adopted tonight for consideration and then just walk briefly through the steps that will be taken to effect that charter amendment. (This is verbatim as well) "Currently, the IDB Charter, as Chairman Evans alluded to, has a prohibition in the issuance of bonds which would be allowed under Tennessee law. Currently the IDB's authority is limited to PILOTs. The proposed charter amendment would include this language; it would give to the IDB the authority to issue two very specific types of bonds. The first type would be the TIF, or incremental tax revenue bonds, and those would be limited to situations in which the Board of Mayor and Aldermen has approved an economic impact plan and authorized the IDB to issue bonds pursuant to that plan. The second type of bonds that are referenced in the proposed charter amendment are the special assessment bonds. Again, those would only be with respect to special assessments that have been approved by the Board of Mayor and Aldermen and pursuant to which the Board has authorized the IDB to issue bonds. They are two very limited type situations that would be covered by this proposed charter amendment, much more limited than what the authority would be under the Tennessee Statute generally for IDBs. If the charter amendment is approved, that would be step one in the steps to effect the charter amendment. The next thing that would happen is the IDB would file a written application with the Board of Mayor and Aldermen asking permission to amend the charter, to adopt the authorization of those two types of bonds referenced in the amendment. The BMA would then consider the application and it would need to make a determination that it is wise, expedient, necessary or advisable that the amendment be adopted and if so then it can authorize the adoption of the amendment. The next step would be that the IDB then files articles of amendment with the Secretary of State setting forth the amendment and if the Secretary of State determines that the amendment is in compliance with the Statute, then it gets filed and made effective."

Chairman Evans asked for questions.

Mr. Vosburg asked if a third type of bond which would be repaid out of lease revenue rather than a TIF or special assessment might be appropriate for an office building project with a typical lease structure as in the case of some historical PILOTs.

Ms. Williams answered it might be possible. She stated another alternative to this more limited amendment would be a broad amendment that would remove the prohibition against issuing bonds generally, which would just be a different approach and the more limited approach is the approach that is currently being recommended by staff after considering the various alternatives and the discussions that have occurred at the last few meetings.

Chairman Evan asked what the advantage would be of that over the existing PILOTs where tax relief is given in the form of payment-in-lieu of tax for the development of a building such as that which then reduces the cost, as opposed to a bond which would underwrite the cost of construction perhaps.

Mr. Vosburg stated it might be based upon the situation in financing markets at that time and the availability of financing. He stated he was just trying to think of whether it should be considered and said another charter amendment could be made if needed in that situation, but that might hold up someone attempting to get a resolution to build an office building in Germantown.

Chairman Evans stated the public/private partnership that provides for public funding assistance really applies only within the Smart Growth area, so such a building being proposed would have to also be in the Smart Growth area, and asked if it is in the Smart Growth area it wouldn't have already applied possibly for one of these two types of financings.

Ms. Williams answered it could if the revenue pledged to the bonds were special assessments or a TIF, but if the revenue pledged to the bonds are leased revenues, then under the current charter, this proposed amendment would still require another subsequent amendment. She stated there are other types of revenue bonds that could be issued and the idea is that if that's the case the IDB can consider those and adopt them as appropriate down the road.

Mike Harless stated you could have both, you could have the PILOT and at the same time turn around and have the TIF financing and the IDB has the authority to handle both of those if this passes.

Mr. Vosburg stated under the TIF or the special assessment, only in the context of the public/private partnership, it would be in Smart Growth. He mentioned a potentiality, maybe down Forest Hill-Irene in the technology corridor area somewhere, and whether changing a few words in this might give the board enough flexibility to deal with a future circumstance, or whether the board should go with this recognizing that it might take six months or eight months to go through the process of getting approval to do something for a potential provider of numerous jobs.

Chairman Evans: Referred to staff or counsel.

Patrick Lawton stated there could be additional amendments to state law regarding lease, special assessment and revenues, but for special assessments – retirement of bonds right now is permitted to that special assessment or TIF for example in terms of property tax. He stated there had been discussion about using other streams of revenue that maybe the developer comes along with that could be pledged for that. He stated things are going to change over time and perhaps that might be the time to come back to the IDB and revisit those additional tools that might become available through state law.

Mr. Harless referred to Chairman Evans' opening remarks regarding a 15-year bond and asked if the bond period is capped at 15 or can it be less than 15.

Ms. Williams stated the statute does not cap it at 15, but the TIF is 30, the special assessment is capped at 15.

Chairman Evans stated legal law in the City's Public/Private Partnership Policy does cap it at 15, it does not have to be 15, it can be less than 15.

Mr. Lawton stated in the matrix, in the Public/Private Partnership Policy it says that the maximum that you could receive for a private development would be up to 15 years, tying that to the tax increment financing bonds.

Mr. Harless added it could be less depending on the amount that's being spent on the project.

Chairman Evans stated if there were no other questions, he would like to get the motion on the floor to request the amendment contained in the board's packets and then go to the public hearing portion of this meeting.

Annette Liles made a motion, seconded by Dick Vosburg, to approve the amendment to the IDB Charter to allow for the issuance of bonds for tax increment financing and special assessments.

Chairman Evans asked for discussion or questions and there being none stated the meeting would move to the public hearing portion.

PUBLIC HEARING – AMENDMENT TO THE IDB CHARTER – REGARDING THE ISSUANCE OF BONDS FOR TAX INCREMENT FINANCING AND SPECIAL ASSESSMENTS.

He stated once again that any person wishing to address the board tonight come forward to the microphone, identify themselves, state their address and confine their comments to the issue that is before the board, and that is whether this board should approve the request for an amendment to the IDB Charter to allow for these two types of revenue financing.

Sarah Wilkerson-Freeman, 7684 Apahon Lane, expressed concern of possible risks to the City with the name of Germantown being associated with the bonds and asked if there was any way to not have the City's name associated with the bonds. She also addressed the availability of the government's tax free status and financing mechanisms available for governments to assist them with building their government infrastructures.

Bob Rogers, 5942 Even Mist Cove in Memphis, asked for clarification on the 15-year term limit on the incremental property tax under the Public/Private Partnership Policy adopted by the Board of Mayor and Aldermen.

Chairman Evans stated there's a 15-year term limit on any of the public financing issues that may be used under that policy and he didn't think that policy specifically addresses each individual type of financing.

Mr. Lawton stated it does not.

Mr. Evans stated it is a general limit of 15 years on any public financing under that policy.

Mr. Rogers stated as far as a special assessment, which is not under that policy, and it is statutory and the statute allows either 25 or 30 years term, there wouldn't be an effort to limit the statutory term by what's before the board tonight.

Ms. Williams stated that would not be a part of the proposed charter amendment.

Chairman Evans asked for other comments. There being none, the board reconvened as the Industrial Development Board. Mr. Evans stated there had been two questions raised that perhaps should be addressed. He stated the board had assumed since its last presentation a few weeks ago that either of these alternatives would fall under the public/private partnership limit of 15 years, if, in fact, the Board of Mayor and Aldermen asked the bonds be issued and then came to the board with them.

Mr. Lawton stated the Public/Private Partnership Policy in terms of being able to develop a scoring high enough on the matrix that is established in the policy says that if they score at that priority 5 level, and reading from the policy, "The total eligible incentive package is not to exceed the net present value of increased property taxes generated over a 15-year period." He stated the reference in the policy is only to the use of the property taxes which would tie it into tax increment financing, not necessarily to special assessment, so the 15-years limit is linked directly back to the use of property taxes. He stated this didn't anticipate special assessments, so the answer would be that it would apply to tax increment financing but perhaps not to special assessment bonds.

Ms. Williams stated she agreed with that.

Chairman Evans: "I guess we're to the point where this is a little different than our understanding previously, because I think all along we have assumed the 15-year limit applied to both."

Ms. Williams: "The Charter amendment itself does not have limitations. The public/private partnership does have limitations, relative to property taxes. I would suggest that if you wanted that same limitation to apply to special assessment that the appropriate place for that to be is in the public/private partnership, not in the Charter amendment. The Charter amendment is not, in my view, the best place to impose that limitation."

Mr. Evans: "So, that if that limitation was to occur, then the Board of Mayor and Aldermen needs to amend the public/private partnership policy?"

Ms. Williams: "That would be my suggestion, as opposed to putting that limitation in the Charter amendment."

Mr. Evans asked if there were other questions.

Mr. Saunders: "Mr. Chairman, I tend to agree with the statement just made due to the fact that I feel like our elected officials should be the ones that set the parameters for this board to issue bonds; due to the fact that they have appointed us to oversee this does not necessarily give us the right to issue them. So based on their best judgment along with any development that might come along in 15 or 20 years, in the best interest of the City, then I would go to their thoughts more so than any other direction. I tend to agree that if we all make a recommendation tonight it would be to pass this to give our elected officials an opportunity to view this again to the best interest of the citizens of Germantown."

Chairman Evans: "We made clear our position all the way through here this last year, that we're here only as a conduit, we're not here to make policy. We've been very careful to make sure that any action this board would take to issue bonds would only be done after the Board of Mayor and Aldermen have acted appropriately and have requested us to do so."

Ms. Williams: "Yes, sir. And as you mentioned before, the amendment itself specifically references with respect to those types of bonds the prior approval of the Board of Mayor and Aldermen."

Chairman Evans: "To the other questions that has been raised about the name of the Germantown Industrial Development Board in any way having the connotation that Germantown is a City issuing these bonds, there is longstanding policy, I guess for the lack of a better term, that differentiates industrial development boards from inherent cities in terms of their ability to issue bonds, specifically revenue bonds, and to have those bonds free on their own, they have no bearing whatsoever on city debt, nor I can tell you having experience with the rating companies that they consider these types of bonds as they look at the outstanding debt of the city. So there is no danger to the city bond rating by the issuance of this type of bond nor is there a connotation if something happened to these bonds that the City of Germantown had in any way contributed to that."

Chairman Evans asked for other questions or statements from any of the board. There being none, he asked to have the motion restated and asked for the roll call.

Motion: To approve an amendment to the IDB Charter to allow the issuance of bonds for tax increment financing and special assessments.

**Roll Call: Mr. Harless – yes; Mr. Lee – yes; Ms. Liles – yes; Mr. Markus – yes;
Mr. Saunders – yes; Mr. Vosburg – yes; Chairman Evans – yes. The motion carried.**

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Chairman Evans asked everyone to sign the amendment before leaving in order to forward it to the Board of Mayor and Aldermen.

ADJOURNMENT

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