

**INDUSTRIAL DEVELOPMENT BOARD**  
**Thursday, April 17, 2012**  
**Administrative Conference Room – 5:30 p.m.**  
**Department of Economic and Community Development**  
**1920 S. Germantown Road**

The Germantown Industrial Development Board met on Thursday, April 17, 2012, in the Administrative 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, Vice-Chairman Mike Harless, Keith Saunders, Charlie McCraw, David Klevan, Dick Vosburg and Dr. Frank Markus

**ABSENT:** Julie Klein

**STAFF** Marie Burgess, Planner and Josh Lawhead, PILOT Attorney, Burch Porter & Johnson PLLC

**MINUTES**

A motion was made by Mike Harless, seconded by Keith Saunders, to approve the March 22, 2012 minutes. Motion passed.

Josh Lawhead explained the changes on the Retention PILOT Guidelines.

Mr. Harless noted that 5 and 17 are basically the same and asked if they can be combined.

5. Company must demonstrate a long-term commitment to the City by buying or building a facility to house its operations, expanding an existing facility, or by signing or extending a lease for at least as long as the term of the incentive.
17. As with all PILOT leases with the GIDB, if the Applicant is leasing real property from a Sponsor, the term of the lease or sublease between the Sponsor and Applicant must be at least as long as the term of the retention PILOT lease.

Mr. Lawhead stated part of number 5 is contained within number 17.

Mr. Evans noted that number 17 brings in a third party as opposed to just the applicant company.

Mike Harless inquired about the following scenario: If somebody qualified for a 4-year term retention PILOT, and we cut the amount of the PILOT benefits in half and said we are going to give you an 8-year instead of a 4-year, but you are going to get half each year so it will equal the same amount at the end of the period, the problem might be that now we require the applicant to have a minimum of an 8-year lease. Under the normal...if we took that out and they qualified for 4-years, that is what they would get: 4-year, and if they had a 5-year lease, that would be okay...as an example.

1. Company must have been operating and directly employing workers in the City for at **least 5 years** prior to submitting an application for this retention assistance.

Henry Evans replied that is depending discussion on clawback provisions.

Mr. Harless stated he did not know if the clawback provisions would affect it. If we're going to give them 8 years at a 50% reduction, they have to have a minimum of an 8 year lease.

Mr. Evans asked whether 6, 7, and 8 on the retention PILOT guidelines are actually new compared to what we saw at the last meeting since we did not have the actual amounts plugged into 6, 7, and 8 at the last meeting.

6. Company must invest a minimum of **\$1,000,000.00** in real and/or personal property for this project in the City.

7. Company must retain a minimum of **40 jobs** in the City with an average annual pay of at least the most recently published per capita income for residents of the City
8. Financial benefit within Shelby County from the jobs retained must exceed the opportunity cost of the tax incentive by a ratio of at least **2 to 1** over the term of the incentive agreement.

Mr. Evans asked if Shelby County has a minimum time in theirs.

Mr. Lawhead replied that Shelby County and Collierville are both 10 years.

Mr. Harless thinks that special circumstances should come out of the retention PILOT guidelines in number 16.

Mr. Evans stated that number 16 should change to combine number 5 and 17 and special circumstances should be removed from the Matrix limitation.

16. If deemed appropriate by the GIDB, in its sole discretion (subject to BMA approval), the GIDB may award **up to 5** additional points for certain attributes or aspects of a particular project in addition to the points and years awarded pursuant to application of the project to the retention matrix, subject in any event to Section 13.

The IDB wants to meet again once revisions have been made to the matrix and guidelines before approving a resolution.

#### City of Germantown Industrial Development Board

##### Retention PILOT Guidelines (Adopted \_\_-\_\_, 2012)

RETENTION PILOTS AND THE GUIDELINES THEREFORE ARE SUBJECT AT ALL TIMES TO CHANGE IN THE DISCRETION OF THE BMA OF THE CITY OF GERMANTOWN ("CITY") OR THE GERMANTOWN INDUSTRIAL DEVELOPMENT BOARD ("GIDB"). ALL POTENTIAL APPLICANTS MUST CHECK WITH GIDB STAFF TO VERIFY CURRENT RETENTION GUIDELINES THEN IN EFFECT.

To qualify for a payment-in-lieu-of-tax (PILOT) retention incentive from the GIDB as to City property taxes:

1. Company must have been operating and directly employing workers in the City for **at least 5 years** ~~period of time satisfactory to the GIDB~~ prior to submitting an application for this retention assistance.
2. Company must be financially sound.
3. Company history and performance regarding any past PILOT agreements will be reviewed by the Board.
4. The Board places a higher value on those projects, which expand operations and/or upgrade technology or processes to better position the company for longevity.
5. Company must demonstrate a long-term commitment to the City by buying or building a facility to house its operations, expanding an existing facility, or by signing or extending a lease for at least as long as the term of the incentive.

6. Company must invest a minimum of \$~~13~~**13**,000,000.00 in real and/or personal property for this project in the City.
7. Company must retain a minimum of **450** jobs in the City with an average annual pay of at least the most recently published per capita income for residents of the City.
8. Financial benefit within Shelby County from the jobs retained must exceed the opportunity cost of the tax incentive by a ratio of at least **2 to 1** over the term of the incentive agreement.
9. Company must comply with all application, fee and compliance requirements in the Board's Policy Statement.
10. The GIDB PILOT matrix shall be applied to the projected jobs retained and capital investment to establish a benchmark for compliance.
11. If the Company does not comply with the number of jobs to be retained or the amount of capital investment for the project, the GIDB PILOT Evaluation Matrix will be applied to the actual jobs retained and capital investment made to determine the appropriate reduction or termination of incentive benefits.
12. A relevant ramp-up period will be established for retention projects, to the extent applicable.
13. ~~As with all PILOTs granted by the GIDB, T~~he term of any retention PILOT shall not exceed ~~810~~**810** years.
14. If deemed appropriate by the GIDB, in its sole discretion, the GIDB may reduce the customary percentage of *ad valorem* taxes waived or reduced by City as to a particular application, in which case the GIDB would increase the term of the benefit due to such decrease in the percentage reduction of *ad valorem* taxes contemplated by the GIDB, the amount of such percentage reduction, and the resulting increase in the term of the benefit, to be determined by the IDB in its sole discretion (subject to BMA approval).
15. ~~Upon enactment by the GIDB of a recapture policy, a~~ recapture period and a recapture payment will be included in each retention PILOT lease, the terms and amounts of each to be determined ~~by such policy the GIDB on a case by case basis, and in the GIDB's sole discretion (subject to BMA approval).~~
16. If deemed appropriate by the GIDB, in its sole discretion (subject to BMA approval), the GIDB may award **up to 5** additional points ~~or years~~ for certain attributes or aspects of a particular project in addition to the points and years awarded pursuant to application of the project to the retention matrix, **subject in any event to Section 13.**
17. As with all PILOT leases with the GIDB, if the Applicant is leasing real property from a Sponsor, the term of the lease or sublease between the Sponsor and Applicant must be at least as long as the term of the retention PILOT lease.

Mr. Evans stated that number 15 leaves the clawback provision question open. It basically says we will make those determinations on each and every PILOT that we approve. Going back to our earlier discussion tonight, is that really what we want to do? Or should we be identifying, whether we do it tonight or at the next meeting, a specific clawback period relative to the period of the PILOT or the total period of any PILOT?

Mr. Harless noted the clearer you make it, the easier it will be in the future.

Mr. Evans said, "That's my point."

Mr. Pouncey asked, "What do you want me to do to bring this back to you?"

Mr. Evans said, "It depends on when you'll have it ready for us and we can schedule a meeting."

Mr. Evans said we have a clawback provision with ThyssenKrupp only as it relates to Shelby County. We do not have any for Germantown.

Mr. Harless noted the issue of a clawback, how a clawback would work, and how much clawback would take place is something that will require some discussion.

Mr. Harless gave the example: If you have a 10 year PILOT, and at year 6 the company was below the threshold based on their audit...at that point, we would have the right to terminate the PILOT. If we had no clawback, that would be the only resolution would be to terminate the PILOT. Or we terminate the PILOT with the clawback that says that you will pay back 6 months of the taxes owed for the last year or it could be an absolute amount like with ThyssenKrupp.

Mr. Lawhead said that it could be the difference between the PILOT payment and the ad valorem taxes that would have been assessed for the time period between the delivery of the compliance report and the actual termination of the lease.

Mr. Saunders stated it should be a significant penalty if you don't fulfill your obligations under the PILOT.

Mr. Lawhead explained the process to terminate Orgill's PILOT and reconveyance of the property.

Mr. Lawhead stated section 5.04(b) of the PILOT leases requires that the tenant submit a compliance report for the prior calendar year by March 1<sup>st</sup>.

RETENTION PAYMENT-IN-LIEU-OF-TAX (PILOT) INCENTIVES ELIGIBILITY AND CONSIDERATION

JOB CREATION Maximum Points for Retained Jobs - 6 Maximum Points for Newly Created Jobs - 11		WAGES Maximum 6 Points	CAPITAL INVESTMENT Maximum 16 Points
Firms will be awarded points for each new job contributing to the City goal of net jobs, retained and new.		Firms are encouraged to pay wages that raise the Per Capita Income of Germantown residents.  The Estimated Annual per Capita Income for Germantown "is the last published date of PCT".	New Real and Personal property for which Retention PILOT benefits are being requested.
Criteria		Criteria	Criteria
Retention (Retained Employees – Minimum number for life of Retention PILOT)		Plus or Minus 5% of the target wage 1 point  For wages greater than 105% of the target, add points as follows  106% - 110% - 2 points 110% - 115% - 3 points 115% - 120% - 4 points 120% - 125% - 5 points 125% - greater - 6 points	
Creation (Applied jobs in the first three years)			
<u>Number of Jobs</u>	<u>Points</u>	<u>Number of Jobs</u>	<u>Points</u>
40-80	3 Points	10-20	3 Points
81-120	4 Points	21-40	5 Points
121-160	5 Points	41-60	7 Points
161-greater	6 Points	61-80	9 Points
		81-greater	11 Points
			\$1 - \$4 Million 2 pts.
			\$4 Million – \$8 Million 4 pts.
			\$8 Million – \$12 Million 8 pts.
			\$12 Million –\$16 Million 12 pts.
			\$16 Million or greater 16 pts.

\*NOTE: See City of Germantown Industrial Development Board Policy for detailed definitions and explanations.

SCORE SHEET

	Generally, as to real property, the PILOT payment will equal 25% of Germantown and Shelby County property taxes which would otherwise be generated based on the then current assessments of the real property (both as to the land and all improvements thereon), plus 75% of the taxes which would otherwise be assessed on and to the land alone as of the date of the PILOT lease. Generally, as to personal property, the PILOT payment will equal 25% of Germantown and Shelby county taxes which would otherwise be generated based on the then current assessment of the personal property. The GIDB has the right to set different components to the benefit formulae as to a particular application as the GIDB, in its sole discretion, deems fit.
Less than 8	No Freeze
8 – 10	Three (3) year freeze
11 – 15	Four (4) year freeze
16 – 20	Five (5) year freeze
21 – 25	Six (6) year freeze
26 – 30	Seven (7) year freeze
31 – greater	Eight (8) year freeze

**COMPARISON OF TRADITIONAL MATRIX VS. RETENTION MATRIX**

**Hypo 1:**

50 Retained Jobs  
15 New Jobs  
140%- Wages over PCI  
\$7mm capital investment  
Not eligible for discretionary points under traditional matrix

**Traditional:**

Jobs- 11 points  
Wages- 22 points  
Capital Investment- 15 points  
Location (G'town) - 10 points  
**58 points= 5 yr. PILOT**

**Retention:**

Retained Jobs- 3 points  
New Jobs- 3 points  
Wages- 6 points  
Capital Investment- 4 points  
**16 points = 5 yr. PILOT**

**Hypo 2:**

30 Retained Jobs  
5 New Jobs  
175%- Wages over PCI  
\$3mm capital investment  
Not eligible for discretionary points under traditional matrix

**Traditional:**

Jobs- 7 points  
Wages- 30 points  
Capital Investment- 10 points  
Location (G'town) - 10 points  
**57 points= 5 yr. PILOT**

**Retention:**

Retained Jobs- 2 points  
New Jobs- 0 points  
Wages- 6 points  
Capital Investment- 2 points  
**10 points = 3 yr. PILOT**

**Hypo 3:**

101 Retained Jobs  
0 New Jobs  
150%- Wages over PCI  
\$3mm capital investment  
Not eligible for discretionary points under traditional matrix

**Traditional:**

Jobs- 15 points  
Wages- 26 points  
Capital Investment- 10 points  
Location (G'town) - 10 points  
**61 points= 6 yr. PILOT**

**Retention:**

Retained Jobs- 4 points  
New Jobs- 0 points  
Wages- 6 points  
Capital Investment- 2 points  
**12 points = 4 yr. PILOT**

**Hypo 4:**

150 Retained Jobs  
15 New Jobs  
125%- Wages over PCI  
\$11mm capital investment  
Not eligible for discretionary points under traditional matrix

**Traditional:**

Jobs- 21 points  
Wages- 16 points  
Capital Investment- 20 points  
Location (G'town) - 10 points

**Retention:**

Retained Jobs- 5 points  
New Jobs- 3 points  
Wages- 5 points  
Capital Investment- 8 points

**67 points= 6 yr. PILOT**

**21 points = 6 yr. PILOT**

**Hypo 5:**

200 Retained Jobs

0 New Jobs

125%- Wages over PCI

\$5mm capital investment

Not eligible for discretionary points under traditional matrix

**Traditional:**

Jobs- 25 points

Wages- 16 points

Capital Investment- 15 points

Location (G'town) - 10 points

**66 points= 6 yr. PILOT**

**Retention:**

Retained Jobs- 6 points

New Jobs- 0 points

Wages- 5 points

Capital Investment- 4 points

**15 points = 4 yr. PILOT**

**ADJOURNMENT**

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