MINUTES
LAWTON ECONOMIC DEVELOPMENT AUTHORITY
MAYORS CONFERENCE ROOM
NEW CITY HALL
JULY 16, 2015, AT 2:00 P.M.

Fred Fitch, Chair, called the meeting to order at 2:00 p.m. in the Mayor's Conference Room. Meeting notice and agenda were posted on the City Hall bulletin board as required by State Law.

ROLL CALL:
PRESENT: David Denham; Fred Fitch; David Madigan (entered late); Ron Nance; Larry Neal; Ernie Sheppard, Doug Wells;
ABSENT: Keith Jackson; David Means.
OTHERS PRESENT: Kristin Huntley, Financial Services; Richard Rogalski, Planning Department; Denise Ezell, City Clerk's Office.

INTRODUCTION OF GUESTS

Fitch stated I would like to introduce Gregg Massey a Civil Engineer for McDonalds and Chris Fullerton with the real estate department of McDonalds.

BUSINESS ITEMS

1. Approve the minutes of May 21, 2015.

Motion by Wells, **Second** by Denham, to approve the minutes of May 21, 2015. **Aye**: Fitch; Nance; Neal; Sheppard; Wells; Denham. **Nay**: None. **Motion Passed**.

2. Consider approving invoices, requisitions, and all other submitted materials for payment and take action as deemed necessary.

Huntley stated we have nothing for payment.

3. Receive Financial Report and take action as deemed necessary.

Huntley stated looking at May's balance sheet you see we have $639,956.36 in the bank. The number under current liabilities is the same as April. I didn't get the accrued interest for the month of May until I got June's so it is all lumped together in the June report. Looking at the profit and loss sheet you see the hotel sales tax for February and March was $12,307.46, property tax income was $935 and sales and use tax for February was $35,762.51. You had professional fees of $2,000 for the Trustee Fee, $9,538.20 for the Garrett Group and $3,773.50 for Center of Economic Development Law. You earned interest in the amount of $78.02. Now look at the balance sheet from June. There is a little more in the BOK TIF Apportionment account from the March sales and use tax. Also you had a big property tax payment in TIF I and TIF II. The accrued interest is $415,865.91. Looking at the profit and loss sheet is shows matching funds. These funds have been requested but we have not received them as of yet. We don't have any matching funds for 2014 but we expect $566,917.70. Property tax income was $201,377.50, sales and use tax was $38,120.20, interest for May and June was $218,037.82, professional fees for Center of Economic Law was $7,583.50 and to the Garrett Group $7,225.70, storage fees was $7,580. We earned interest in the amount of $92.24. Are there any questions?

Denham asked what was the storage for.

Rogalski stated we moved Jefferson out of the storage unit and into a private unit. We agreed to rehabilitate the structure across the street and you approved approximately $120,000 with conditions. Jefferson never completed those conditions. I have been contacted since his passing by an individual who may or may not have claim to the business. At this point we don't know what is going to happen. Under the Relocation Act there is an ability of survivorship. This is where a certain person could qualify to continue the business. I tell everyone that this funding is only available to relocate and not to operate the business. So if a legitimate heir comes forward and desires to operate the business then it is possible that this claim could happen.

Sheppard asked was the business a d/b/a or an LLC.

Rogalski stated I believe it was an LLC.

Sheppard stated I was wondering what the legal ramifications would be. Wouldn't the business be extinct at the point of which the owner dies?

Jensen stated that will not be for us to decide.

Sheppard asked will it be a Judge's decision.

Jensen stated yes.

Sheppard stated so we should get some kind of order.

Jensen stated and we shouldn't honor anything until we do.

Rogalski stated that is exactly right and I have been informing every one of that.

Wells asked are we responsible for paying any more storage.

Rogalski stated no.

Wells stated I saw them working on the roof but Jefferson didn't set up a water account which was a part of the agreement.

Rogalski stated to be reimbursed for the roofing Jefferson had to show us all the invoices and to sign a relocation assistance agreement. He never signed the agreement. I was told he paid the roofer directly. At this point we have no obligation to the roofer.

Jensen stated there will be an order stating who the hair/heirs are. They have a separate issue of the business if there is an issue. We can't pay money to anyone.

Wells asked is there a business to sell other than the name.

Rogalski stated the building is owned by Calvin Hale and he has no claim. There isn't a lot left except the name, some equipment and possibly LEDA's obligation.

Fitch stated if the family sells to a third party we have no obligation.

Rogalski stated we have no obligation to another party.

Fitch stated and if the court rules we are obligated don't they have to run the business for 2 years.

Rogalski stated something like that. This is an unfortunate situation. He never met any of the conditions.

Fitch stated do I have a motion on the financial report.

Motion by Wells, **Second** by Sheppard, to accept the financial report. **Aye**: Madigan; Nance; Neal; Sheppard; Wells; Denham; Fitch. **Nay**: None. **Motion Passed.**

4. Report on project activities, issues and programs including discussion and possible action on implementation and coordination.

Fitch stated we have nothing new to report.

5. Consider approving an amended retainer agreement for professional services between LEDA and Mark Garrett of the Garrett Group, LLC to perform certain audit and utility cost consulting services with regard to the Lawton Town Center electric utility relocation.

Jensen stated I handed out my last letter to PSO. Mark Garrett, Heather Garrett, Rogalski, and Whisenhunt have made 2 site visits to Tulsa. Heather Garrett was added to the first contract. She took notes and keep records of all the documents that we reviewed. This is becoming so massive. I believe it is time to agenda an executive session item to discuss the pending claim. Garry Garrett is the one that manages the office and is now helping to manage the documents once we have them. So now we have Mark Garrett the lead guy, Heather Garrett a lawyer/CPA and Garry Garrett office manager. We are proposing you add Garry Garrett to the contract.

Sheppard stated Item 5 says "all services will be performed by Garrett". I saw the fees were added to the attachment but it doesn't say that in the agreement.

Jensen stated they will be allowed to assist him but he has to be the lead guy. He is the one with the expertise.

Sheppard stated so that really means anybody within the Garrett Group.

Jensen stated no. It means Mark taking the lead by going to Tulsa. We don't want just Garry or Heather going. It has to be Mark and they can assist him.

Sheppard stated so we are going to pay their rates also and could be paying 2 of them at the same time.

Jensen stated correct. We are taking about tons of records and if we are not keeping good records I don't know what to request. I don't know how to avoid that.

Sheppard stated it isn't quite clear.

Jensen stated I understand. Mark is the lead guy and he is the one we hired for his expertise.

Motion by Denham, **Second** by Nance, to approve the agreement to add Garry Garrett. **Aye**: Madigan; Nance; Neal; Sheppard; Wells; Denham; Fitch. **Nay**: None. **Motion Passed**.

6. Consider an application for Economic Development Assistance submitted by the McDonald's Corporation, to assist with the cost of the public improvements necessary for the development of a new McDonald's restaurant to be located on KCA Trust property at 702 E Gore Blvd.

Rogalski stated there has been a proposed project for a McDonald's site on the KCA property located on east Gore across from OHP. I apologize because there was some discussion that occurred between the KCA, McDonald's and our former City Manager and I wasn't involved so there might have been things discussed that I'm aware of. One of the requirements is public improvements. The public improvements that are being requested are an 8" water main that extends from the south side of Gore. They will bore under Gore for the placement of a fire hydrant. They need water for their fire compression system to sprinkle the building. They also need service from a public main from the City of Lawton. Rather than bore the 6" fire main and the service line they are putting in a public line underneath the road and coming off of that. In the future the public line could be extended to serve the larger tract. This could be an improvement for the whole 53 acres. The estimated cost is $44,368.50. In the review process we noticed there wasn't a left turn bay. That would be required for public safety and the estimated cost is $59,710.75. The next question is whether or not the tract is appropriate for economic development. It is located in an enterprise zone and reasonably fits the definition of a "regional retail project". The site itself is less than 1 acre but both improvements will serve the entire 53 acres. It is a great location off of I-44. Since the McDonald's south of town has closed this will be the last McDonald's before entering Texas. McDonald's has estimated their annual sales would be $2.3 million and the city's portion of that sales tax would be $95,000 at 4.125%. Not all of that would be new sales tax. In the application the number was not $95,000 it was $69,000 and that was based on approximately a 3% sales tax. With the application was a memorandum from Devol and Associates that showed a possible draft agreement with the State for some sales tax sharing on this property.

Jensen stated that would be on the State's sale tax portion and not on our portion.

Rogalski stated that is approximately 1.83% of the discretionary portion of sales tax. This agreement has not been finalized. It is just a draft. The second page of the letter discusses a sales tax sharing with the City of Lawton which is a little more than 1%. If the State and City shared the tax it would be 3% which would be 1% per tribe. This has not been approved by City Council and I'm unaware if it was discussed with the KCA. This brings up the issue that the property is located on KCA Trust land and there are concerns about sales tax collection on Trust land. McDonald's stated they will collect and remit sales tax. Eventually the KCA will approach the City and ask they share the sales tax. In the application McDonald's stated that 100% of the sales tax revenue would be new to the City of Lawton. I don't believe that will be the case. I believe the location is as good as you can get in creating new sales tax but I think 1/3's of the revenue will be from people driving I-44. Based on 4.12% that would generate about $31,600 a year in new sales tax. The total request for assistance is $104,079 so it would be about 3 years of new sales tax revenue that would be invested in the public improvements. Everyone except those going into an existing building have some level of public improvements. Freddy's Steakburger and House of Cool both had public improvements around $37,000 each. Aldi Food Market did a waterline and a left turn bay similar to this project and their cost was $211,000. The Walmart Neighborhood Market had public improvements of $431,000. All their improvements that served their store directly they paid for. What they requested assistance on was half the cost of the improvement to the intersection of 38th and Lee Blvd. which is an intersection of 2 arterial roads. Another item of discussion is how much of the public improvement are improvement that primarily serve the business and not the public. With the water main extension there are no adjacent properties that will benefit from this. Fire hydrants often serve more properties than where you put them because they serve properties within 400' of each side. In this case there are no other properties so I don't see that this improvement serves the community. The vocal point of the bay was so you could make a left turn into the project. Provided that the Traffic Engineer doesn't limit the u-turns then that wouldn't benefit the project. Putting this in is a public safety measurement so there is some general community improvement. Based on my analysis I feel without the determination of the sales tax issue it is almost impossible to make a recommendation. I can't tell you how long it will take to payout and this puts it into a question. I don't know if there are any other plans for the development. I know the contract with the State only covers McDonald's. At this time I would recommend your recommendation to Council would be to deny the assistance.

Nance asked are any of these improvements eligible for lease purchase.

Rogalski stated no.

Fitch stated the problem is the State doesn't have anything concrete with the tribe. I know McDonald's says they will collect and remit sales tax but the experiences in the past with this being Trust land they can override McDonald's ability to collect the taxes.

Fullerton stated they are in the process of finalizing the tax agreement. It has been to the Governor's office and has had its first round of comments. I was hoping it would be finalized before this meeting but it isn't.

Fitch stated I think we need for the agreement to be final and if it states the tribe cannot tell McDonald's they are not to collect sales tax we could approve it. Until all these things are finalized we would actually be putting ourselves in jeopardy.

Fullerton stated I understand that. I see where we might be a little premature for being at this meeting. I think there are things Devol needs to work out with you. I would like to add that in addition to the public improvements McDonald's is also making private improvements that are above and beyond what typically is in our average development. We are going to extend the sanitary sewer line all the way from I-44 over to 7th Street to service a pilot line for the sanitary sewer. We are also going to widen the private drive and make a turn lane which will be another safety issue for a traffic concern.

Rogalski stated the City doesn't have any jurisdiction on Trust land but to McDonald's benefit they are doing everything exactly the same as if we did have jurisdiction. They are doing a great job developing the property.

Jensen asked has the KCA or anybody else told McDonald's that the sales from that restaurant on Trust land will not be taxable.

Fullerton stated no. We have an agreement that all of our sales are taxable.

Jensen stated we are trying to understand why the Governor's office is negotiating a share of their portion with the KCA. As far as we know everybody in the Governor's Office, the State Tax Commission, our office and McDonald's say those sales are taxable.

Fitch stated with it being on Trust land it isn't taxable.

Jensen stated it is taxable. In the opinion of our office, the State Tax's Commission and the Governor's office they are taxable. We were told the Governor's office is worried about the portion issues. According to Rogalski they are going to collect the sales tax so we are confused by what is being negotiated. McDonald's is a lessee going on tribal Trust land.

Fullerton stated the lease is a 20 year lease with 25 year options. It is ready to be executed. I know that Devol has been working with the State to get all the taxes worked out where each tribe gets 1%.

Jensen asked is there anything in the lease agreement that says you won't collect State, County and City sales tax.

Fullerton stated no. We will be collecting and remitting taxes.

Jensen asked and remitting those directly to the State.

Fullerton stated yes.

Fitch stated so the only involvement of the tribe is they are leasing Trust land to a private entity and that entity will collect sales tax.

Fullerton stated correct. The tribes want 1% of the sales tax and the State will be giving up their portion to allow the KCA to have their 3%.

Fitch stated the total amount that would go to the tribes is 2.9999.

Denham stated so they are expecting some from the City.

Rogalski stated yes.

Denham asked if Council denies giving them 1% does it kill the deal.

Fitch stated probably. You are seeing the aggressiveness of the Governor. This is new territory and the State isn't getting any sales tax from Trust land. I think this is something the State wants to engage in because there is a lot of Trust land to be developed. They are trying to establish a precedent.

Denham asked is this going to be negotiated every time. This is 3 tribes versus 1.

Fitch stated I'm concerned about the balance of the 53 acres. They will be getting the size of line to accommodate further expansion on Trust land.

Sheppard stated at that point it really doesn't become a public improvement it is for their benefit.

Fitch stated it is my understanding that the State is only endorsing the 1 acre tract.

Rogalski stated at the time I spoke with them the agreement was only to fund the 1 acre tract. It was my recommendation they do it for the whole 53 acres to be done with it. That would be better for us because it becomes a regional project and we have a sound understanding that anything that goes there will be taxable. So the City would get their tax. I would suspect if this deal is successful somebody else will be going in.

Fitch stated I agree because the next thing you know they could cut a deal with Burger King and cut their prices because they have no tax. I would think McDonald's would want the same rules for the entire 53 acres.

Denham stated as I recall with the TIF Districts the Tax Commission can't tell one McDonald's from another. So are you going to do a separate TIF District to report the taxes?

Fitch stated no.

Denham asked then how are they going to know the dollar amount that was submitted by that McDonald's.

Rogalski stated OTC will have to track it.

Denham asked how will the City know how much to give to the tribe. You will only get 1 check.

Wells stated we have the ability to look at each individual business.

Denham stated they couldn't do it when we started the TIF District. That was the reason for doing the second TIF.

Wells stated they weren't up to date on their computer system.

Fitch stated Mitchell is authorized by OTC to see each individual business.

Denham asked haven't we lost our sales tax for everything except the 12 block area.

Wells stated we gave it up when we went to TIF II.

Rogalski stated if this application is approved there has to be a joint resolution between the City of Lawton and Lawton Chamber of Commerce.

Fitch asked why?

Jensen stated because we are using the economic reserve fund.

Fitch stated I would like to see the returned taxes submitted back to the City to replenish that fund. Once the money is gone it is gone and we would like to do other projects.

Wells stated I agree on one hand and on the other due to the financial situation of the City we could use an extra $30,000.

Denham asked is that a condition we could make in our recommendation to Council. I think right now we have to table this issue.

Wells stated we need to look at that for all future developments. We didn't do this in the past.

Fitch stated this could be sitting precedent with the Indian tribes and I want to have all bases covered. Shawnee, Oklahoma had a deal very similar to this with the Shawnee tribe and they have never received any sales tax. We are talking about a lot of money and you can't sue the tribe.

Jensen stated that is why in this scenario we are happy to have McDonald's on board. McDonald's is not going to say they are not going to collect sales tax and remit it to the State because it is a criminal offense and everybody agrees on that.

Fullerton stated we do. We fully intend to pay taxes.

Fitch stated we are glad to have you as a partner but we have to make certain all the I's are dotted and T's crossed.

Fullerton stated I fully understand.

Sheppard asked if it is just a timing issue can McDonald's not wait. Can't we wait until we have the agreement with the State?

Fullerton stated it is my understating the City would have to agree to accept lesser tax.

Rogalski stated the tribe is looking for 3% for this deal to go. If they don't get the 3% the deal may not go.

Jensen stated that is the position of the tribe but not the State. The State is not negotiating for us.

Fitch stated if the State decides on 1.5% they will be looking at us to give the other 1.5%.

Jensen stated we were told they were initially trying to negotiate for us until the State Tax Commission told the Governor's office they couldn't do that.

Wells asked what portion of the City tax are they asking for.

Denham stated 1.1324.

Motion by Madigan, **Second** by Wells, to table this item.

Sheppard asked what is accomplished to table this item.

Fitch stated we will wait until everyone has everything all together.

Sheppard asked when is that going to happen.

Fitch stated we don't know.

Sheppard stated so we are going to table it indefinitely.

Fitch stated yes.

Sheppard asked in the meantime can our recommendation go before City Council.

Fitch stated no. I think the payback has to be worked out before we agree to anything. We need the State to get everything worked out so we can see where we stand.

Fullerton stated McDonald's would ask that this be tabled. I believe we are premature based on the conservations I'm hearing. We would like the opportunity to come back with all the information and documents. In my opinion it would be most beneficial to work something out with the City before coming back to this meeting.

Rogalski stated I doubt that the KCA is going to finalize with the State unless they have something with the City. They are looking for a number and that needs to be resolved before coming back in terms of the sales tax collection.

Fullerton stated we want that finalized as well.

Aye: Nance; Neal; Sheppard; Wells; Denham; Fitch; Madigan. **Nay**: None. **Motion Passed**.

7. Discuss the remaining obligations of the redeveloper under the Amended Retail Redevelopment Agreement, the Development Financing Assistance Agreement, and Related Documents between the Lawton Economic Development Authority (Authority) and Lawton Town Center, LLC (Redeveloper).

Rogalski stated in your packet you had a memorandum from Lisa Harden regarding this item. We have a little retainage left. We were releasing the retainage based upon occupancy of the spaces. We did a recalculation and it went down a little. At this time AT&T and H & R Block hadn't opened but they are now so it went down a little.

Fitch asked doesn't this leave about 13,000 square feet.

Rogalski stated yes. There are only 3 empty spaces. One on each end of the main building and an outparcel. There are 3 outparcels and they do have an obligation to be developed. That obligation reads that no later than March 22, 2018 he has to have building shells on those parcels. If it isn't done those parcels would revert to LEDA.

Wells asked would we have to pay back the purchase price.

Rogalski stated I don't think so. They could sell it and somebody else could build it but something has to be built by March 22, 2018.

Denham asked is there just 1 more out parcel they have to construct.

Rogalski stated there are 3. There are 2 south of the hotel and 1 north of the existing buildings. There is a reversionary clause if they aren't built but if they do we have reserved $900,050 on the note. This is a prorated share based on the area of each parcel. The developer has an incentive to get them built. If you remember LEDA held back the office tract so the developer has no obligation on that tract.

Sheppard stated Collette stated he would like to have that piece of property at one time. Is he still interested?

Fitch stated his first interest is to fill the other tracts.

Rogalski stated LEDA also owns the very north section that was the coke plant. This is called Phase 4 of the phasing plan. There is an obligation for him to develop this after his construction loan is paid in full. If he breaches this we have the ability to terminate the agreement but until that time has passed he does have the first right of refusal.

Denham asked does that expire September 22, 2016.

Rogalski stated yes. Once his loan matures the bank could extend the loan. His obligation to us is subject to the bank. He is not obligated to us as long as the bank is giving him extensions. Once he refinances then he has an obligation to start the other parcel.

Wells stated hopefully since Ft. Sill has announced thing will get going.

Fitch stated I spoke with Collette that afternoon to inform him of the information. We have gotten over what appeared to be the stumbling block.

8. Consider approving the Professional Services Agreement between the City of Lawton, Lawton Fort Sill Chamber and Lawton Economic Development Authority.

Fitch stated you received this agreement in your packet.

Sheppard asked there was $800,000 coming in how much of that does the Chamber get.

Wells stated 75%.

Denham asked has hotel/motel turned around yet or it is still declining.

Wells stated it is hard to tell. The first 2 or 3 months of the year hotels were book solid but I don't think it has been that strong since then.

Madigan asked is this a renewal of what we had and is it for 1 year.

Fitch stated yes.

Motion by Denham, **Second** by Neal, to approve the agreement. **Aye**: Nance; Neal; Sheppard; Wells; Denham; Fitch; Madigan. **Nay**: None. **Motion Passed**.

DISCUSSION ITEMS AND REPORTS

ADJOURNMENT

There being no further business the meeting adjourned at 3:15 p.m.

Motion by Wells, **Second** by Nance, to adjourn. **Aye**: Neal; Sheppard; Wells; Denham; Fitch; Madigan; Nance. **Nay**: None. **Motion Passed**.