MINUTES
LAWTON ECONOMIC DEVELOPMENT AUTHORITY
2^{ND} FLOOR CONFERENCE CENTER
NEW CITY HALL
SPECIAL MEETING
AUGUST 18, 2011, AT 3:00 P.M.

Fred Fitch, Chairman, called the meeting to order at 3:00 p.m. in the New City Hall 2^{nd} Floor Conference Room. Meeting notice and agenda were posted on the City Hall bulletin board as required by State Law.

ROLL CALL:

PRESENT:	Denham, David (entered late); Fitch, Fred: Madigan, David (entered late); Means, David; Nance, Ron; Sheppard, Ernie; Wells, Doug.
ABSENT:	Neal, Larry; Zarle, Richard.
OTHERS PRESENT:	Denise Ezell, City Clerks Office, Frank Jensen, City Attorneys Office.

INTRODUCTION OF GUEST

Fitch stated we have Debra Burch from the Chamber, Dan Batchelor our legal council, Rex Givens Councilmember, Adam Perry from Furrh and Associates, and Steve Robinson from the Lawton Constitution.

BUSINESS ITEMS:

1. Approve the minutes of August 4, 2011.

Motion by Wells, **Second** by Denham**,** to approve the minutes as written. **Aye**: Fitch; Means; Nance; Sheppard; Wells; Denham. **Nay**: None. **Motion Carried**.

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

Fitch stated there are no invoices to approve today.

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

Perry stated looking at the Statement of Financial Position. There are two items to talk about. First the checking account shows you have $63,139 with an $8,000 deposit. So as of today the account is at $71,185.

Wells stated we approved invoices at the last meeting.

Perry stated those have been deducted. The balance when I left the office was $71,185. The line of credit is almost maxed out at $12 million with $250 left on this line of credit. Next is the Statement of Revenue and Expenses. This is the start of a new fiscal year so there is only one month in each column. For the month of July your income was $38,576.02 and expenses were $19,867.56 which gives you a net income of $18,708.46. The final page is the State of Revenue and Expenses – Project to Date. Your total income for the thirty-six months is $1,289,636.23, total expenses are $13,226,244.52 with a net income of -$11,936,608.29. Does anyone have any questions?

Motion by Denham, **Second** by Mean**,** to accept the Treasurer's Report. **Aye**: Means; Nance; Sheppard, Wells; Denham; Fitch; Madigan. **Nay**: None. **Motion Carried**.

4. Consider Approval Of The First Amendment To The Retainer Agreement For Professional Services With M.D. Johnson, P.E., To Provide Professional Engineering Services To The Lawton Economic Development Authority, And Authorize The Chairman And Secretary To Execute The Agreement.

Jensen stated when Johnson realized the high cost of public liability insurance required by the agreement he has ask for an amendment. Instead of him holding LEDA harmless and defending us in the case of acts or omissions he will be solely responsible for his acts or omissions in his defense, but not for our defense in regards to LEDA or the City. He is an independent contractor so whatever he does he is doing in his capacity as his own employer/employee so he has his own liability. We have a good defense and it would not be reasonable to require him to defend us and hold us harmless when we are not going to be liable. I made that change and recommend approval.

Wells stated it also changes it to a ninety day agreement.

Jensen stated that is correct

Wells stated in regards to the price list that is attached we stated most of that would be done by city staff so we are only talking about mileage.

Motion by Means, **Second** by Nance**,** to approve The First Amendment To The Retainer Agreement For Professional Services With M.D. Johnson, P.E., To Provide Professional Engineering Services To The Lawton Economic Development Authority, And Authorize The Chairman And Secretary To Execute The Agreement. **Aye**: Means; Nance; Sheppard; Denham; Fitch; Madigan. **Nay**: Wells. **Motion Carried**.

5. Consider Approving A Resolution Authorizing The Issuance Of A Tax Increment Financing (TIF) Note By The Authority To The City Of Lawton In The Amount Of Not To Exceed $600,000 For The Purpose Of Assisting The Authority In Its Obligations For Interim Funding Relating To The Acquisition Of Land And Other Redevelopment Activities For Downtown TIF District Projects (The "Note"); And Other Matters Relating Thereto.

Jensen stated when Council agreed to pledge up to $600,000 from the hotel/motel tax funds to pay the interest for twelve months on the $12 million dollar note they gave me direction to bring back a TIF note in the same amount and present it to LEDA. This note is in favor of the City of Lawton to secure the pledge from the hotel/motel tax funds. We have prepared a

Resolution and TIF note with the maturity date of August 1, 2014 at an interest rate of 2%. Council requested this in exchange for their pledge of revenues.

Wells ask how will we have the money by this maturity date? I believe as a Councilmember this is a feel good document. It will be a long time before the City is reimbursed if ever.

Jensen stated depending on the progress of the project we thought the maturity date was reasonable. They can ask for an extension if needed like they do with the banks.

Wells stated you have 10% that is uncommitted of any revenue coming in and they are projecting $200,000 from Kohl's.

Mitchell stated we will also have property and sales tax from the hotel conference center. It will be 10% of that number as well.

Jensen stated we would recommend approval.

Denham ask are we going to be using TIF note proceeds to pay down the debt. We will get $600,000 in hotel/motel tax.

Wells stated the hotel will pay their taxes when it is built.

Denham stated the commitment is strictly for the downtown hotel and not the $600 in the ED fund.

Fitch stated we are utilizing the $600 in the ED fund to pay the current interest. This is to allow a TIF note for $600 against the project when income starts coming in to put the money back into the ED fund so the City will have economic development dollars.

Wells stated this is just a feel good note.

Madigan ask are there not other entities in line for future TIF revenues.

Denham stated the hotel/motel money goes back to the hotel operator.

Wells stated 90% of the funds are already committed.

Batchelor stated based on the letter of understanding we have with the banks with respect to what we will do down the road issuing tax increment notes on this project we have pledged certain tax increments that will be generated by the hotel to the hotel project. Setting that aside 50% will be made available as a pledge to the lenders, 40% to the notes issued to the redeveloper and 10% uncommitted available to LEDA to use as needed in connections to the project.

Wells stated this does not touch the banks money.

Madigan stated we have a security interest.

Wells stated this is just a feel good note.

Jensen stated the language of the note says it is subject to first priorities and the banks are first priority.

Well stated that is why I say it is just a feel good note.

Jensen stated it may not be. There could be some proceeds.

Madigan ask if a dollar is generated in TIF revenues what will this be when the percentages are worked out.

Batchelor stated we have not put together all the notes that deal with the percentages. We have an agreement among ourselves this is the way it is going to work. When we are ready to move forward, and I think that will occur by the 1st of December, then we will structure each of those notes and update the pledges to make sure everything is in accordance with our understanding. Before we get into any movement or further issues with the present lenders we will make sure that everyone of the pieces ducktail appropriately and each has its appropriate allocation and priority on the revenue stream. We will need to take a fresh look to make sure it is all set in place. It is not a problem now, but when we start to issue other notes we will need to come back and revisit it. We may have to more explicitly set out the percentage allocations and priorities.

Wells stated to answer your question on a dollar income .50¢ would go to the banks .40¢ to the developers and .10¢ to LEDA.

Denham stated we need a spreadsheet for the entire project. We have money owned to CCIDA and we are spreading TIF dollars all over the place. 50-40-10 doesn't add up. I would feel more comfortable when making a decision if we know where all the dollars are pledged. Obviously when the $12 million is paid off that frees up a big chunk. We need to know what we are committed to and a spreadsheet would be very helpful.

Wells stated as a Councilmember I look at this note as a feel good note. This will be one of the lowest priorities for repayment.

Givens ask I understand we sub-divided the TIF District. Is that correct?

Batchelor states yes. We created a separated tax increment district for this development.

Givens stated I assume there is some income for the other TIF District. Where does that money go?

Mitchell stated back to LEDA. There is no obligation on that revenue.

Wells stated we are not collecting anything from the original TIF District.

Denham stated property tax only.

Wells stated no sales tax. The County said we might get $90,000 this year for the whole district.

Mitchell stated we have received two checks for the County for property taxes.

Nance ask what about the natural increase of 5% we have had on ad valorem tax every year.

Mitchell stated this is what we are starting to see.

Nance stated so that increase will come to LEDA.

Mitchell stated yes.

Nance stated historically on most of my properties there is a 5% increase a year. 5% of the entire tax base is a big number. The next year it would be 10% and the next 15%. I don't understand why we are not already realizing some income.

Denham stated if you remember we went negative for the first two years and the base year was mess up.

Mitchell stated part of the reason for creating the second TIF District was because the downtown property values were going down.

Wells stated they were still paying something.

Denham stated we only get anything above the base. Due to us acquiring the 12 square blocks they were removed from the tax rolls.

Givens ask is the TIF note on the whole area.

Fitch stated no just on the 12 block area.

Givens stated I'm referring to the TIF note from LEDA to the City.

Fitch stated you will have a TIF note and money coming from the project itself. Then you have an increase in ad valorem coming from the rest of the TIF to LEDA.

Sheppard stated he is asking which TIF is giving the note back to the City.

Denham stated revenues generated out of the 12 square blocks.

Givens ask Jensen is that correct.

Jensen stated yes.

Nance stated I would make the point that these are very important dollars. We are talking about economic development dollars. It is important they be paid back.

Fitch stated correct. There will be things from the rest of the TIF District that will come directly to LEDA. I would assume LEDA could use some of those dollars to payback the $600,000.

Givens stated that is my question.

Fitch stated we have that option, but it is not in the TIF note.

Nance stated hold that thought because those funds could be critical to other project.

Given stated that is what I meant and that was the whole reason for asking for the note.

Motion by Wells, **Second** by Sheppard**,** to approve A Resolution Authorizing The Issuance Of A Tax Increment Financing (TIF) Note By The Authority To The City Of Lawton In The Amount Of Not To Exceed $600,000 For The Purpose Of Assisting The Authority In Its Obligations For Interim Funding Relating To The Acquisition Of Land And Other Redevelopment Activities For Downtown TIF District Projects (The "Note"); And Other Matters Relating Thereto. **Aye**: Nance; Sheppard; Wells; Denham; Fitch; Madigan; Means. **Nay**: None. **Motion Carried**.

6. Consider approving a Resolution Requesting the City Council of Lawton to Authorize the Submission of an Application Pursuant to the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act.

Mitchell stated this handout is the commentary that is in the Council packet for next Tuesday's meeting. Two years ago we worked hard with Batchelor and Bill Phelps to get House Bill 1786 passed. This bill permitted authorized cities to submit applications to the Department of Commerce who were receiving or experiencing growth impact at military installation centers. This bill centers on the five military communities in the State of Oklahoma. The concept behind the bill is through the application process cities would be eligible to capture sales tax revenues to help pay for improvements. Our application has been drafted. We went through extensive exercise in collecting economic information and data. We hired a third party independent firm to verify the information we collected. On page 3 and 4 is a spreadsheet. Looking at the black column you see the annual totals prior to match payments. This is the revenue stream that is estimated for Kohl's and the hotel conference center over the life of the TIF. The blue column shows the potential match from the State. All of this is predicated on when it happens, how it happens, size of the development and so forth. The third column is the total. The second page shows there is a potential for capturing almost $11 million in State revenue. This is a new approach to assisting communities with growth impact from military growth. This is a chunk of money that wouldn't be available any other way. I have given you a list of thresholds we have to meet in order to qualify and we believe we are meeting those thresholds.

Batchelor stated this will be the first application ever filed and if approved the first one approved under the amendments to the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act for a military impact growth community. The revenue stream you see was based solely on the estimated tax increment to be generated by the initial Phase I development consisting only of the hotel conference center and Kohl's. You see in the next to the last column the matching funds could be very substantial. The reason the matching funds are larger than the increments in the preceding columns is because this table does not include the hotel occupancy tax which is pledged to the hotel conference center, but they will count for purposes of matching. So the table shows a larger number in the matching fund than the increments you have available to support the balance of your project cost.

Denham stated it does include the entire sales tax and not just the increment sales tax. That is why you see Kohl's sales tax increments at 275 and we are looking at 738.

Batchelor stated that is correct. This is based on 100% of the increments before allocation to what we were talking about earlier. We will need to break this out to see what this revenue stream looks like with 50% allocated to the lenders, 40% allocated to the developer and the remaining 10% to be allocated for the purposes LEDA chooses.

Wells ask when we talk about total sales tax did we include the capital outlay sales tax.

Mitchell stated it has to be undedicated. For every sales tax dollar collected the State receives 50%. That is a big number.

Batchelor stated let me talk a moment on how the payment works. First you have to demonstrate eligibility and we have a strong solid case for eligibility. The Department of Commerce will take the information provided and will make a determination of Net State Benefit. Net State Benefit will be gross new tax revenues. For purposes of that calculation the Department of Commerce will look at the new tax revenues that are generated by the military growth impact. Based on the information the average revenue impact gross new tax revenues for the State of Oklahoma for the next two years is about $17.8 million a year. Under the matching payment arrangement the State matching fund payments may not exceed the lesser of the sales tax increments or the Net State Benefit times the gross retail sales. The State will run a calculation on net benefit looking at the $17.8 million in new tax revenues and then they will make a cost allocation to the State that is derived from what it cost the State in terms of services for each addition resident from the State. There are state cost of various kinds that you can statistically portion out. Then they will come up with some number that is significantly less than $17.8 million. Our anticipation even after the calculation is made that the State Benefit number will likely be greater than the tax increments you are portioning to the project. I think we have a strong case for dollar to dollar match. This is a very promising situation financially for this project.

Givens ask is this money like the emergency fund that is unfunded?

Mitchell stated it comes from the Oklahoma Tax Commission based upon what is actually collected.

Givens stated so it doesn't depend upon legislative funding.

Batchelor stated once the application is approved every six months you will provide a certification of the sales tax and based on that certification a check is cut from a revolving fund that is created and maintained under state law.

Wells ask is there a maximum number of years.

Batchelor stated the maximum period is the length of the project.

Wells stated so ours is 25 years.

Mitchell stated there is another qualifier and that is a threshold of $25 million in sales tax and $25 million in property tax. If the project accelerates it could terminate early.

Batchelor stated you are limited to matching your funds or to the Net State Benefit. Which ever is less.

Wells stated District II was changed in 2010 so that starts a new 25 year period for that area.

Batchelor stated it did.

Wells stated so it should actually go out to 35 rather 27.

Batchelor stated yes.

Wells ask why around the 13th year does it start going down.

Batchelor stated the hotel occupancy tax under the amended project plan is only in effect for a 12 year period.

Wells ask so it drops off then.

Mitchell stated no. The agreement we have with PID we pay this for a certain period of time.

Batchelor stated the 12 year period is also reflected in the project plan.

Denham ask if we renew the agreement would it be eligible for these funds.

Batchelor stated if we were to amend the project plan to remove the termination date on the occupancy tax I believe it would continue.

Wells ask you are talking hotel/motel tax when you say occupancy tax.

Batchelor stated yes.

Wells ask why obligate it to PID.

Batchelor stated the project plan says it is only defined as a tax increment for that 12 year period. You would have to amend the project plan. This doesn't mean you don't collect it as a City, but you have not designated it as a tax increment. This is not an urgent issue, but it is one that we might want to think about.

Denham stated someone will want to run the convention center after our agreement is over. I don't expect it to make money because they never do.

Wells stated we would want to capture that $400,000.

Mitchell stated we will have the option in doing that. Our only obligation at this point is PID for the initial term.

Wells stated at the last LEDA meeting two weeks ago Mitchell said we weren't going to submit this application until there was actually something going on to generate some money. What has changed in the last two weeks to make us decide to submit the application?

Mitchell stated I don't remember saying that.

Wells stated you did.

Mitchell stated I guess I didn't realize that it was going to be finalized.

Batchelor stated in other circumstances some might have waited until there was greater certainty about the size of the first phase. We have found ourselves at a point and time where we need to move on this project. It has become increasingly clear that if we had put all the pieces together it would be very desirable to go ahead with this application so we could say this is what the revenue streams looks like. We could wait if we didn't need to know, but for purposes of trying to see what the minimal affect will be we have run this set of projections based on that minimal per space development.

Wells stated so we are not going to get any revenue until it is generated in sales tax.

Batchelor stated correct.

Denham ask are we not also limited in what this money can be used for.

Batchelor stated yes. It must be used for eligible project cost.

Denham ask would paying back the bank be an eligible cost.

Mitchell stated it is anything listed in your project plan.

Denham stated so acquisition cost and demolition cost are all eligible.

Mitchell stated infrastructure cost, utility relocation, and those kind of things.

Wells ask does it include the bank note.

Batchelor stated yes it does, but it is not because it is a bank loan. It is because of what you used the bank loan for.

Means asked under the threshold requirements number two says "no more than 10% of the net leaseable space may be used for retail purposes". What does this mean?

Batchelor stated a military growth impact project is an exception to that requirement.

Fitch stated that deals with the enterprise zone.

Batchelor stated there are two or three exceptions to that particular requirement and a military growth impact project is one of the exceptions.

Mitchell stated I have the application if anyone would like to look through it.

Wells ask are you saying because we are a military impact that 10% doesn't apply.

Batchelor stated that is correct.

Fitch stated this application was modeled after the application for an enterprise zone and BRAC is an exception to the application.

Motion by Denham, **Second** by Means**,** to approve a Resolution Requesting the City Council of Lawton to Authorize the Submission of an Application Pursuant to the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act. **Aye**: Sheppard; Wells; Denham; Fitch; Madigan; Means; Nance. **Nay**: None. **Motion Carried**.

EXECUTIVE SESSION

1. Pursuant to Section 307B3 and C10, Title 25, Oklahoma Statutes, consider convening in executive session for the purposes of conferring on matters pertaining to economic development, including the purchase/transfer of property and financing in connection with the Lawton Downtown Redevelopment Project, for the hotel-conference center and the mixed-use commercial retail establishments and take appropriate action, if necessary, in open session.

Motion by Madigan, **Second** by Means**,** to convene into executive session. **Aye**: Wells; Denham; Fitch; Madigan; Means; Nance; Sheppard. **Nay**: None. **Motion Carried**.

The Authority convened in executive session at 3:45 p.m. and reconvened in open session at 4:55 p.m. Roll call reflected Wells; Denham; Fitch; Madigan; Means; Nance; Sheppard.

Fitch stated the Authority convened into Executive Session Pursuant to Section 307B3 and C10, Title 25, Oklahoma Statutes, consider convening in executive session for the purposes of conferring on matters pertaining to economic development, including the purchase/transfer of property and financing in connection with the Lawton Downtown Redevelopment Project, for the hotel-conference center and the mixed-use commercial retail establishments with no action taken.

DISCUSSION ITEMS AND REPORTS:

ADJOURNMENT

Motion by Wells, **Second** by Nance**,** to adjourn. **Aye**: Denham; Fitch; Madigan; Means; Nance; Wells. **Nay**: None. **Motion Carried**.