MINUTES
LAWTON ECONOMIC DEVELOPMENT AUTHORITY
MAYOR'S CONFERENCE ROOM
NEW CITY HALL
JANUARY 9, 2020, 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: Denham, David; Fitch, Fred; Fortenbaugh, Sean; Madigan, David (enter after roll call); Means, David; Nance, Ron; Neal, Larry.
ABSENT: Jackson, Keith; Sheppard, Ernie.
OTHERS PRESENT: Richard Rogalski, Executive Director; Bob Ross, Acting City Attorney; Denise Ezell, City Clerk's Office; Johnny Owens, County Commissioners Office; Kim McConnell Lawton Constitution.

INTRODUCTION OF GUESTS

Fitch stated we have Kim McConnell from the Constitution and County Commissioner Johnny Owens with us today.

BUSINESS ITEMS

1. Hold a workshop concerning the amended conditional Economic Development Agreement between LEDA, the City of Lawton and Republic Paperboard Company, LLC, and take action on said agreement if necessary.

Fitch stated any paperwork that you brought with you please disregard and take a new packet. The documents we emailed have been updated.

Rogalski stated first is the draft of the agreement. When Lisa made the changes, you can see she tracked her changes. All the changes made since December are marked in red. For the most part they all focus on one of the big questions that you had. How will you know if you are going to get the revenue? Next is the table. The difference in this one and the one we emailed you is the total investment of $75,000,000 instead of $94,000,000. The chart shows the distribution based on a total taxable increment of $75,000,000. Last is a list from Republic. This is their spending plan of the projects and which phase. There are no dates on the phases and it shows the value of the projects. It is not a detail cost estimate but it shows you what they plan on doing.

Nance asked has any of the work already been done.

Rogalski stated they could have. It won't matter since we put the TIF in before the first of the year. It shows their total spent is $94,528,000. While the equipment value is set it will go down due to installation and engineering cost. If they list an air compressor for $1.4 million probably the compressor is $1.2 and there is another $200,000 for installation. Bottom line is we just don't know exactly. Some of the investment may not flow into taxable value. If you invest in real property it remains taxable value but the installation of equipment may not give you a value. It is the equipment cost that is taxed. I didn't want to have all your numbers based on $94,000,000 and then it comes in lower and we are all shocked. We also wanted a guarantee so you have that investment for your income. What we did in this document was said they are going to invest $94,000,000 and if the taxable increment is less than $75,000,000 then their payment goes down proportionally. That gives you a $9,000,000 cushion if that goes away. As long as we have a taxable increment of $75,000,000 then you get the values that are shown in the table and chart. The project is still very good. I'm not saying it is going to be $75,000,000 we are just trying to find a bottom level to offer Republic.

Denham asked was the calculation of $75,000,000 done by you or Republic.

Rogalski stated that is a guess that we offered to Republic. Republic may do some calculations and come back with a different number. Our number is based on 80% of equipment value. I was trying to be very conservative. I used $4,000,000 of real property investment and it is probably more than that. I believe the buildings will cost more than $4,000,000 and real property pays a lot better than personal property. That helps us.

Fitch stated if in year 2, 3 5 or 10 they appeal to the County Assessor and the value is lowered that puts a new look to this.

Rogalski stated you can only appeal on real property and that number is based on $4,000,000.

Fitch stated that is right. I'm sorry.

Rogalski stated this is heavily loaded for personal property. That is why you see the flow going down so fast. It depreciates out. On the chart you see the more colorful things at the bottom are obligations and the gray is the remainder that would be available for projects or public improvements. You see that STEM is dark blue, project support is orange, public entities include the schools set percentage, finance reserve and implementation are very small categories. They are 1.6%. The rest is public improvements and your total each year that will come out.

Fitch stated David, anything you may have printed please disregard and take a new packet. Changes have been made since we emailed those out.

Rogalski stated what we understood you wanted was a guarantee of what your income was going to be. Looking at this, even though they are still required to do a $94,000,000 investment and you have that in your packet, we put in the changes that says if the taxable increment is $75,000,000 or more all is good with your $4.3 million. If it is less than that then it goes down proportionally. Seventy-five million is a bit arbitrary but not completely. We have just provided this to Republic and they may come back with a different number. This is where we are today. If it comes out less than this chart everything will come down to include our owe. You can see the project performs pretty well.

Denham asked did you calculate project support. Is it a set percent of the available amount?

Rogalski stated it is a set percent that gets you to $4.3 million in year 2044. The first five (5) years is zero and the next five (5) is at 55.55% of the income. That is directly calculated to end up with the exact number at the bottom at the end.

Fitch stated why don't you give us an overview of the draft and the red highlights.

Rogalski asked do you want me to address the questions that Ernie had?

Fitch stated why don't you go ahead and address those.

Rogalski stated Erie had three (3) questions. His first question was in paragraph 2.2.2h of the agreement. He asked what if we don't earn the right amount of money annually. My answer is your obligation is not annually. Your obligation is at the end of the agreement. What this condition precedent says is that it will generate enough increment to pay that amount. If you look at the what we added to their conditions it sort of guarantees the money. This condition says if it doesn't earn enough money for us to pay them what we owe then we don't owe them any money.

Fitch asked if it doesn't reach the figure based on this, we pay them a lesser amount.

Rogalski stated yes. Conditions precedent means it takes away if you start. We have modified paragraph four (4). Look at item 4.1. They are still making the $94,000,000 investment but in the event the total assessed value is less than $75,000,000 the total assistance descried in 3.2, which is the $4.3 million, will be reduced proportionally based on the assessed value of the real personal property improvements added to the tax roll as a result of the project expansion. We have added a guarantee of the assessed value which cures the condition precedent because if the assessed value goes down what we owe goes down. We have resolved that issue. Another question was about an MOU that is connected with the sales tax collection listed in paragraph 4.6. It says that Republic agrees to execute a Memorandum of Understanding which provides for specific guidance for sales and use tax report in this agreement. They will send it to us monthly or quarterly and it will have certain data. It will spell out how the information changes back and forth. The MOU hasn't been drafted yet.

Fitch asked how is that verified. Do they have documentation.

Rogalski stated that is what the MOU is about. It is so we all understand how the information they give us is verified. They have to give us their sales reports. For us to be able to pull the sales tax they have to tell us what they spent. Then finance will find the vendors and pull out the revenues. We are doing this with Bricktown Brewery and they are sending us documentation. That is what this MOU is all about.

Nance stated everything that is purchased has to be purchased or delivered in Lawton.

Rogalski stated anything over $10,000. We are looking for the big stuff. On your spreadsheet it shows up in contingency. You see it is only earned through the first five (5) years. It ends up being about $350,000 and that is based on a low percentage. It could be more than that. The City will apply for the State match and it could end up being a much bigger number. We are not relying on that because sales tax collection during construction is not a reliable number. This project performs without the sales tax.

Denham asked what percentage do we get.

Rogalski stated I put the sales tax high up on the spreadsheet. It is based on different capture rates. The top one is if we capture 25% and the other is 40%.

Nance asked is that 25 or 40% of the total cost.

Rogalski stated that is if we capture 40% of the purchases.

Nance stated not total cost just purchases. I don't understand because everything I buy that is delivered to Lawton the vendor always gets the tax right. Now if I purchase in Oklahoma City, I pay their sales tax but everything that is delivered here is correct.

Rogalski stated it is likely we will capture more but we don't want to rely on that. We want to rely on the ad valorem. That is the most solid tax. If we earn more than that it will be distributed like everything else but for now we are focusing on that in terms of reliability. We are also looking at the long-term stuff. We didn't try to change a lot. We just tried to answer the questions. The last questions he asked is in paragraph 5.5.2. He wants to know what "cumulative" means in the first sentence. Bob is going to share with you on that.

Ross stated that is what I call "term of art" and what you would call "mumbo jumbo". In a simple contract you agree to sell me property and then you refuse to sell. Under the typical contact I could sue you for specific performance and get the court to order a settlement or I could sue you for damages. Typically, those rights and remedies are cumulative. I can do either one or both. That is what cumulative means as to remedies. I can choose all of them. Choosing one of them doesn't mean I can't later choose the other. That is what cumulative means. He was asking if that affected something else and it doesn't. Cumulative just has to do with rights and remedies. That is making plain that if you have three (3) remedies you can enforce them all and choosing one (1) doesn't forego the other two (2).

Rogalski stated I would offer one more thing on sales tax. The other thing we did to make certain we collected sales tax and it was delivered here is we offered Republic a 10% incentive in this document. Whatever sales tax we collected we are going to give them 10% to cover the cost of the MOU. Sometimes it cost more to have things delivered here and this will help with that expense. This provides them an incentive to do better. We are getting very good participation with Bricktown because they have an incentive as well. There default amount is reduced providing the sales tax we collect. We collect it but it reduces their default amount.

Fitch asked are there any questions. I know this is a lot of information. At the next meeting we will have Dan available by video conference and he will go through all these things and answer any questions you might have.

Denham stated basically our deliverables from them is they must do $75,000,000.

Rogalski stated they still have to spend $94,000,000. If the resulted taxable value is less than $75,000,000, we reduce the amount we owe them.

Denham stated okay and they still have to keep the twenty (20) jobs with a salary of six (6) figures.

Rogalski stated yes. Their $4.3 million has two (2) caveats. One (1) is if they don't do what the agreement says it reduces the amount and (2) it also reduces if the taxable value is less than $75,000,000. We are not telling them they are only allowed to spend $75,000,000 we are saying that after they spend the $94,000,000 we are going to have in increment of $75,000,000.

Fitch stated you said the $4,000,000 was on buildings and structures and the $90,000,000 was on equipment originally.

Rogalski stated yes. The sheet you have today doesn't show a different in the breakdown so I left the $4,000,000. This sheet is based on $71,000,000 of personal property. The reason I did that was because the personal property depreciates very fast. That makes my chart more conservative. If they had $75,000,000 of increment and $10,000,000 was real property you would actually earn a lot more throughout the course of the project. I wanted to keep it conservative so you feel fairly certain that if the assessed value is $75,000,000 you are going to earn the money you need to pay them.

Nance asked has Republic has the opportunity to see any of these figures.

Rogalski stated they got them today. They may come back with a different number. Keep in mind originally the idea was that they were earning the $4.3 million project support because of the jobs they were creating and the huge impact it makes to our community. The TIF revenue was just an extra for us. As long as we earn enough to pay the 10% to STEM, the public entities get their money and we pay Republic this community is still ahead. If they come back with a lower number it is still a good deal for the community. Those jobs pay multi times over and over again. The job is $2.1 million a year in new payroll and the $4.3 million is based on two (2) years of new payroll. That is how we came up with that number. You end up having $2.1 million in new payroll in our community. That has a six (6) time multiplier so that is $12,000,000 or at least a four (4) time which would be $8,000,000 coming into our community. This is a good deal and this is how we pay for that good deal. We are able to pay for it and make a least another $4,000,000.

Denham do they anticipate having it all up and running by year six (6).

Rogalski stated they are required to spend their $94,000,000 by 2023.

Denham asked when do they have to have the jobs hired by.

Rogalski stated within the first five (5) years. We don't start paying until year six (6).

Denham asked so they have to have all jobs in place before we pay them anything.

Rogalski stated that is correct.

Denham asked if they only get eighteen (18) jobs in year six (6) do we pay a proportion or do we pay nothing until they reach the twenty (20).

Rogalski stated it is going to be based on the total payroll of $2.16 million.

Fitch stated by year six (6) eighteen (18) might equate to that.

Denham asked and we are not worried about them cutting other jobs.

Rogalski stated this is what the agreement says: "If after completion of the projects and within the first five (5) years period from the effective date of this agreement the employment certification reflects has less than 165 employees" so they have to maintain 165 employees "or a reduction in the new project annual payroll of $2.16 million LEDA will reduce the total assistance obligation." Those are their two (2) marks they have to have.

Denham stated so it would be prorated.

Rogalski stated yes.

Nance stated the financing reserve in your chart has a number until 2025 and then it jumps over half for the rest of the time.

Rogalski stated the finance reserve is the little tiny yellow one. The bright orange is the project support. That is what we are paying Republic. The first five (5) years we don't pay them anything.

Denham stated but it is still 55% of the TIF funds from year six (6) on.

Nance stated so that is what we pay to Republic.

Rogalski stated yes. The blue is STEM, green is public entities, yellow is financing reserve, little blue implementation and administration and the remainder is public improvement. The STEM, public entities and project support are set. You have to pay those. The finance reserve, implementation and administration and public improvement is all up to you. Finance reserve and implementation is set at 1.6% in the spreadsheet. That is not a set number.

Denham stated which is less than $350,000 over the entire project.

Rogalski stated yes.

Denham stated the public improvements are heavy loaded the first five (5) years when we are not paying anything out.

Rogalski stated if there is more than $75,000,000 taxable revenue all that adds on to public improvement proportionally. After the first five (5) years we have earned $2.4 million in public improvements. At that point we have $2.4 million. The money under the gray bar can be spent on public improvements or you could create a reserve to make sure you can pay Republic. That is up to you. This assumes the scenario that you are going to use it all for public improvements until you have to start paying.

Madigan asked is that this entity or body that decides that.

Rogalski stated yes and City Council to some extent. All the TIF revenues come to this body. If someone wants to do a project you guys are the bank. If you want you can decide to have a half a million in a reserve account and once you do then you will start projects.

Fitch asked and anything that we decide has to be developed out there.

Rogalski stated yes.

Denham asked is that out there or out by the airport.

Neal stated any of the TIF Districts.

Denham stated except for downtown.

Rogalski stated the improvements all go into the TIF area.

Neal stated but it can’t go downtown.

Rogalski stated no.

Fitch stated just the two (2) new ones.

Rogalski stated yes.

Fitch stated those monies will be held in a separate account. We are going to classify that account as Republic Industrial TIF. We don’t want to comingle any of the funds.

Rogalski stated we will have certain cutouts. For the STEM and public entities for every dollar we receive there is a certain cutout. The rest of them don’t have a specific cutout. It is based on how you decide to spend the revenues. The first money that comes in will be sales tax. We will distribute to STEM and public entities and then we will be paying implementation cost.

We owe the City money for putting this all together. We will start paying off implementation cost first.

Fitch asked what is the timeframe on making these payments to the entities. Is it once a year?

Rogalski stated I believe annually. I don't remember.

Fitch stated but it is not monthly.

Rogalski stated that is in the project documents. In the beginning it would have to be annually.

Fitch stated if we invest some of the revenue where will the interest go. Is that disbursed back to everyone.

Rogalski stated interest would stay with LEDA and the account.

Fitch stated so it would have an impact on this gray area.

Rogalski stated yes. When the increment comes in those funds are set aside for the entities share. The rest will go however LEDA wants to pay the project funds.

Denham stated so the County sends us the entire amount then we send it to those entities.

Rogalski stated yes.

Denham stated and the City will give us sales tax.

Rogalski stated yes.

Fitch asked are there any other questions? We will meet again on the 23rd at 2:00 and Dan will be here on video conference so we can communicate with him.

Rogalski stated I can't guarantee at this time it will be a video conference.

Denham stated let's just not get him in person.

Rogalski stated if he is in town for another purpose he might be in person.

Denham stated as along as we are not reimbursing his travel.

Fitch stated I appreciate all you of being here today. It is in Republic' hands and once they get back with us we will forward the feedback. Hopefully we can discuss it at the next meeting.

Denham asked so we will have their feedback by the 23rd.

Fitch stated yes.

Rogalski stated I don't have any other questions from you all so if you have questions about the agreement please let me know.

Madigan stated this was terrific and we have good documentation. This was a long way from when it was just announced to us that one meeting. I appreciate very much the documents you have provided.

Denham asked for the future TIF's do we work with LEDC or whomever.

Rogalski stated I have been thinking about this and Dan and I have talked. There is a lot of work that needs to be done for the future TIF's. We need to get out there and sell them. We may want to consider a subcommittee of Mayor and Council, LEDA and LEDC. To do this right we have to have better communication. That way you know about an agreement before it is dropped on you and told you must approve this or the world is going to end.

Fitch stated Ron is the chairman of LEDC and a member of LEDA. If he is appointed to represent LEDC does that penalize LEDA.

Rogalski stated you still can't have a quorum.

Ross stated you would want to be sure when you make the appointments what the capacity is going to be.

Fitch asked if he represent LEDC that doesn't go against LEDA's number of people.

Ross stated correct.

Rogalski stated if you said three (3) member from LEDA and he was representing LEDC you would have three (3) members besides Ron.

Nance stated the magic number is less than a quorum.

Rogalski stated correct.

Fitch stated a quorum for LEDA is five (5). If Ron is appointed for LEDC we would want three (3) from LEDA because that is less than a quorum.

Ross stated if your questions is will that count towards a quorum yes it will. You couldn't have four (4) from LEDA and Ron because that gives you five (5).

Fitch stated okay.

Rogalski stated if a Councilman is representing LEDA, we can't have three (3) other Councilman.

Nance stated if we do, we would have to post the agenda and notice.

Rogalski stated yes.

ADJOURNMENT

There being no further business the meeting adjourned at 2:43 p.m.

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