MINUTES
LAWTON ECONOMIC DEVELOPMENT AUTHORITY
3RD FLOOR CONFERENCE ROOM
NEW CITY HALL
NOVEMBER 3, 2022 9:00A.M.

Fred Fitch, Chair, called the meeting to order at 9:00 A.M. in the 3rd Floor Conference Room. Meeting notice and agenda were posted on the City Hall bulletin board as required by State Law.

ROLL CALL:
PRESENT: Jason Hensley, Fred Fitch, Sean Fortenbaugh, Randy Warren, David Madigan, David Means, Ron Nance, Larry Neal
ABSENT: Ernest Sheppard

OTHERS PRESENT: Richard Rogalski, Economic Development Consultant; Michael Cleghorn, City Manager; Cindy Augustine, City Attorney's Office; Tim Wilson, City Attorney's Office; Joe Don Dunham, Financial Services Director; Susan Schlecht, Financial Services; Kim McConnell, Lawton Constitution.

Statement of Compliance with Oklahoma Open Meeting Act, 25 O.S. 301-314

Chairman Fitch verified the posting of notice and agenda in compliance with the Oklahoma Open Meeting Act with Blazek-Scherler.

Introduction of Guests

Chairman Fitch introduced Joe Don Dunham, the Financial Services Director for the City of Lawton.

Business

1. **Discuss the pending sale of real property located at Lot One (1), Block One (1), Lawton Downtown Center, Part Two (2), an addition to the City of Lawton, Comanche County, State of Oklahoma, according to the recorded plat thereof, recorded in Plat Book 7, Pages 10-10B, as Document No. 2013000649 in the office of the Comanche County Clerk, Oklahoma. Further discuss whether LEDA's subordinate mortgage on said property has been partially satisfied. Take action as the Authority deems appropriate.**

Rogalski stated in 2019, LEDA entered into an Economic Development Agreement with FTG Brown, LLC, or Mike Brown, for the redevelopment of Lot 1, Block 1 in Lawton Downtown Center, Part 2, which is Bricktown Brewery. As part of that Redevelopment Agreement, there was $154,391.00 set aside as a forgivable obligation that placed a lien on the property. That amount was to be forgiven after they operated for 10 years. We also added that the amount would be reduced by any sales tax that is collected during the construction phase. They were required to report the amount after construction, and they submitted invoices totaling approximately $1.2 million. Our 2 percent TIF tax would be $23,509.60. Susan is looking over this and comparing it to our sales tax receipts that we've received. She was only able to verify $538,579.82. The 2 percent on that amount would be $10,716.74, and we all agree that amount should be taken off.

Schlecht stated when we receive the invoices, we look for information that verifies that the City of Lawton actually received the money. We look at the address where it was purchased at, or if it was shipped, where it was shipped to. If we are not able to verify that information, or if sales tax is not shown, we don't include that. We had quite a few receipts; some of them were duplicates, some were package slips with no dollar amount. These are just a few examples.

Rogalski stated what you are considering today is that the landlord wants to sell the property. You would have to approve the transfer and determine how to deal with this obligation. I want to confirm with everyone that the lease with Bricktown Brewery is not jeopardized in this transaction. Outwardly, nothing will change. Bricktown Brewery is doing well in that location, and we see no reason for that to change.

Chairman Fitch questioned the difference in amounts between what Brown provided and what the City has been able to verify.

Schlecht explained that initially, the receipts were sent in and there was a misunderstanding about how much sales tax would be received. They were claiming the full 9%, and when we got it all back down to the 2%, it was significantly less than they expected.

Rogalski explained that the City has only been able to verify a portion of the receipts received, and that is the remainder of the difference.

Chairman Fitch stated I believe that Legal and Finance need to sit down with Mike Brown to talk about this. I'd be happy to be there as well, and I'm sure Richard would be too. As I hear what I'm hearing, I feel more comfortable with the $10,000.00 than I do with his amount. We need to get Mike Brown involved in this. Per the agreement, everything should have been shipped to Lawton so we could collect the sales tax on it. It sounds like that didn't happen, so the sales tax went to other cities.

Warren stated we need to be sure that we are following the agreement. While it may not be a big deal now, we want to stay consistent for larger projects that are coming with far more sales tax. We need to have a hard and fast rule.

Dunham stated he would never advise that the City of Lawton reimburse sales tax that the City did not receive.

Chairman Fitch stated he agrees.

Madigan asked if there is any opportunity to strengthen the language of the agreement going forward.

Rogalski stated yes. If you recall, this was thrown together sort of last minute. Moving forward, we would want much stronger language.

Madigan stated maybe give an example or some type of illustration.

Rogalski stated that is exactly what I was going to say. For example, with Blue Braveheart, we could say, "This is how you are forgiven. If you bring in x number of dollars, the sales tax is this much, you receive this much, and so on".

Chairman Fitch stated they created a paragraph for the Blue Braveheart term sheet that will now be included in all of LEDA's agreements. It explains that these are public monies and LEDA has certain obligations we must meet to ensure that the public is being treated fairly and equally. We have certainly learned a little bit along the way. I do believe that in the other agreements, it was very clear that the materials had to be delivered to the job site.

Rogalski stated while there may be a question about the amount that is left, there is certainly a significant amount that is left, for sure. We have to deal with that someone, and that's the bottom line. We may quibble about $10,000.00, but there is definitely still $120,000.00 there that we have to figure out how to carry forward.

Chairman Fitch stated I think we need to get with Mike Brown to resolve the first issue, so we can resolve this whole thing. Can it be transferred to the new owner? It would have to be with his consent.

Rogalski stated our language does allow for LEDA to approve a transfer forward. There would be a document that allows for that transfer, and then the obligation would be forgiven after 7 years. You could also ask that the debt be paid now. That would satisfy to agreement. Or you could entertain a separate lien on something else.

Chairman Fitch stated we would need to find out if Brown has any collateral that he is willing to put up for it.

Madigan stated I would like to offer up an option since this is ready to close, and this is incumbering the property. Please feel free to modify this in any way you see fit, but I think we offer two options: either you pay the full amount minus the $10,000.00 to satisfy the debt, or, if this body is okay with it, escrow it at some financial institution. In my opinion, this obligation belongs to Mike Brown, and it shouldn't be transferred to someone else. Nobody will be willing to sign off on that. This is just my opinion, but if Mike wants to close on the property, he needs to figure out someway to satisfy the agreement.

Warren stated the point of the forgiveness was to keep the restaurant open. Maybe once it is satisfied, we restart the clock on that again.

Chairman Fitch stated that means we would want the new owner to assume that obligation, and I don't know if he would want to do that.

Rogalski stated one of the things I don't like about the language of this agreement is that it carries the amount. So, if you close the day before the ten years is up, you would owe the whole amount. In any other agreement, that amount would be lower for every year that it is open. That is something you can consider if Mike is agreeable to paying it off.

Chairman Fitch stated if you do it that way, it's $45,000.00 a year plus the $10,000.00, so that's $154,000.00 minus $55,000.00, so he would still owe us $99,000.00. We could talk to him about that.

Rogalski stated that is not how it is written in the agreement, but I believe that is a reasonable path to take in order to settle this.

Chairman Fitch stated I think we need to meet with Mike Brown to discuss the amount of the sales tax and how he wants to satisfy this agreement.

Cleghorn stated Section 6.2 is in line with what the authority is discussing. It spells out that the amount has to be paid.

Neal stated that usually the closing company will call and ask for a payoff amount to release the lien. We give them an amount and they take care of the rest.

Cleghorn stated Section 6.2 also addresses it being passed on to a successor.

Warren stated that would leave it between Mike and the new buyer to figure out.

Rogalski stated I would like to point out that Bricktown Brewery has done great, and this has been a successful venture.

Chairman Fitch stated the point of the agreement was never to make money; it was to keep a restaurant in that location, and so far, it has worked.

Madigan stated I like Chairman Fitch's idea. It is professional to sit down with Mike Brown to discuss what tax is due. Would it be reasonable for this body to make a motion now so we don't have to reconvene on this matter?

Motion by Madigan to give FTG Brown the option to pay off the agreed upon amount of the obligation or to have that money held in escrow as cash for the next seven years before we release this obligation.

Warren stated he likes that idea. Really, we're only talking about the difference between $10,000.00 and $20,000.00. After that, it's between Mike and the new purchaser about where the money comes from.

Wilson stated the agreement does not make mention of reducing the amount outside of the section describing default, which is applicable in this circumstance.

Rogalski stated it is a closing amount, so the authority can state any amount they see fit that benefits the public.

Dunham stated it sounds like you would be authorizing a group to renegotiate the deal, but I think ultimately, the new deal would have to be reapproved by the board because it is outside the scope of the original agreement.

Warren stated yes, this would just authorize a group to negotiate.

Chairman Fitch stated this would just give us some room on negotiations, and then we would have another meeting to approve everything.

Nance stated unless you simply take the $10,000.00 of the total amount and put the rest in escrow. Then we can work out the details.

Rogalski stated if he agrees to do a letter of the agreement, then you can just authorize the Chairman to execute that subordination. Anything other than that would have to come back.

With no second, the original motion died.

Substitute Motion by Nance, **Second** by Warren, to allow FTG Brown to escrow $144,000.00 in exchange for an executed lien release in order to not delay closing on the property commonly referred to as Bricktown Brewery; to postpone further negotiations and to require any other amounts be brought back before the authority for approval; and to authorize the Chairman to execute a release on the subordinate mortgage. **AYE:** Fortenbaugh, Warren, Madigan, Means, Nance, Neal, Hensley, Fitch. **NAY:** None. ***Motion Passed.***

Discussion Items and Reports

Rogalski stated we've talked several times about interests on the North end of the Lawton Town Center. Recently, you all approved a term sheet with SOB on the North corner. For the remainder of the property, you now have a signed letter of intent with a grocery store.

Chairman Fitch stated this LOI gives us something to negotiate with, and it's a very good thing.

Adjournment

There being no further business, the meeting adjourned at 9:44 a.m.

Motion by Means, **Second** by Warren, to adjourn the meeting of November 3, 2022. **AYE:** Fortenbaugh, Warren, Madigan, Means, Nance, Neal, Hensley, Fitch **NAY:** None. ***Motion Passed.***