

ECONOMIC AND COMMUNITY DEVELOPMENT COMMITTEE MINUTES

January 30, 2018

In Attendance

Councilman Erskine Oglesby, Committee Chair, called the meeting to order at 3:09 p.m. in the Assembly Room. A quorum was present, including Council Chairman Jerry Mitchell, Vice-Chairman Ken Smith and Council members Carol Berz, Anthony Byrd, Russell Gilbert, Chip Henderson and Darrin Ledford. Councilwoman Demetrus Coonrod was not present. City Attorney Wade Hinton and Administrative Support Assistant Kera Jackson were also present.

Others in Attendance

ECD: Charita Allen, Deputy Administrator of Economic Development; Mayor's Office: Jermaine Freeman, Civic Engagement Coordinator; Finance: Daisy Madison, CFO

Approval of Minutes

On motion of Councilman Gilbert and seconded by Councilman Ledford, the minutes of the last meeting (January 16, 2018) were approved as published.

MLK Extension TIF Discussion

Councilman Oglesby opened the floor to Ms. Allen to discuss the TIF approval process.

Her PowerPoint presentation covered the following steps:

- Step 1: Completeness and developer capacity
- Step 2: "But For" and "Capital Plan Inclusion"
- Step 3: Application Review Committee
- Step 4: Public Hearing
- Step 5: ECD Committee Presentation for City Council (Feb 13)
- Step 6: Hamilton County Commission Consideration
- Step 7: City Council Votes
- Step 8: Hamilton County Commission Votes
- Step 9: IDB Considers Development and Finance Agreement
- Step 10: Presentation to the State of Tennessee

The floor was then opened to Council for questions. Discussion ensued on the following:

- What qualifies this as a TIF? (Henderson)
- Does the entire area have to qualify as a TIF? (Henderson)
- What is the Term of the TIF? (Henderson)
- Has any construction been started? (Henderson)
- Does the "But For" have to apply to the whole project? (Henderson)
- Why are we not using the 21st Century funds for this project? (Gilbert)
- How many years is this TIF Term? (Gilbert)

- Total is 15 years for this TIF? (Gilbert)
- Requested educational session on why TIF is the best option (Henderson)
- Have we ever used the 21st Century money for anything else? (Byrd)
- Will we be paying for building these future projects? (Byrd)
- Will we be paying for businesses to come here? (Byrd)
- What are the plans for 9th Street if the TIF did not go through? (Ledford)
- What revenue would we be losing out on if we do not approve TIF? (Henderson)

Councilman Oglesby opened the floor for speakers from the public. Those speakers were Helen Burns Sharp, Tressa McCallie and John Konvalinka. Ms. Burns Sharp provided a report for the Council to review and attach to the record. (*See attached*) The speakers were against the TIF and questioned if this TIF fits the “But for” test. They also questioned why proceed with a TIF if construction has already begun. Councilman Oglesby explained that these questions should be answered on February 13, 2018, when the TIF is presented. There being no further questions or comments, the presentation was closed.

Adjournment

There being no further business, Councilman Oglesby adjourned the meeting at 3:47 p.m.



submitted for record
E C D Committee
01-30-2018

ATM REPORT
PROPOSED MLK BLVD EXTENSION TIF
January 29, 2018
Helen Burns Sharp



Accountability for Taxpayer Money-Chattanooga (ATM) is a non-partisan public interest advocacy group focused on tax incentives and government transparency. For more information, please visit www.atmchatt.com.

1. EXECUTIVE SUMMARY

Evergreen Real Estate, the Nashville developer of Cameron Harbor, filed an application with the City of Chattanooga in late 2017 for tax increment financing (TIF) for a one-block extension of Martin Luther King Boulevard and for apartments, medical office and commercial space.

Accountability for Taxpayer Money (ATM) is a non-partisan public interest advocacy group. **ATM believes that using TIF for this project is a misuse of tax increment financing**, raising the legal and policy questions discussed in this report and undermining TIF as the legitimate public financing tool it can be.

TIF also makes the project more expensive. It would result in the city and county giving up future property tax revenue for up to 20 years on private property near the riverfront. This development would have happened anyway, with the private entities paying property taxes to support city and county services. Some describe this TIF as “payday lending with taxpayer dollars.” These future tax dollars could be used to address high priority community needs.

The Developer’s Economic Impact Plan seems to suggest that the private investment—apartments, medical offices, restaurant--hinges on TIF approval. That is not the case here. Construction is already underway on the apartments and medical office building. Developer originally did not contemplate a new public street extending through their property to the Riverwalk trailhead. The timing of this possible public improvement created the sound rationale for discussions to see if an equitable public/private partnership could be structured.

The City approached the Developer about its desire to extend M.L. King straight through their property. (Existing “curvy” public access to the Riverwalk exists just to the south.) Developer offered to sell what would become the new right-of-way. The City indicated it did not have readily available funds to purchase. The parties came up with TIF.

ATM recommends that the City and County find the money for a scaled back project from the recent \$6 million Alstom settlement for a failed PILOT project next door or from hotel/motel tax revenues since the project relates to tourism downtown.

Regardless of funding source, the cost of the public project should be pared back by eliminating Fulton Street and by eliminating the “slippery slope” policy issue of using public funds to invest in a private development (office building, commercial and apartments).

TIFs can be seductive for local governments. In the case of this proposed TIF, it could appear that the public would gain an impressive new entrance to the Riverwalk and not have to “pay” for it with tax dollars (because TIFs “spend” future tax dollars). TIFs (and PILOTs) have long-term implications for city and county finances and the ability to provide public services. TIF can be an appropriate economic development tool. It can also be abused.

2. CITY TIF POLICIES

In 2015, the City of Chattanooga adopted policies and procedures that would apply to any future applications for tax increment financing (TIF). The MLK Extension is the first TIF application submitted to the City following adoption of the resolution. The policies provide the lens that the City must use in evaluating applications. The proposed MLK TIF is not the kind of project contemplated by the Council's TIF policies.

The City TIF policies state that the "TIF Program is primarily for economic development projects that provide improvements in **blighted or underutilized areas**." This TIF would be on the riverfront downtown, which is very valuable real estate, the opposite of what most would think of as blighted. It is not underutilized, as the Cameron Harbor development continues to the south on Riverfront Parkway.

The City TIF policies allude to projects that involve "the generation of new jobs with **wages in excess of the average annual wage** in Chattanooga." The job generating components in this proposed TIF district are an office building, a restaurant and an apartment complex. None of these uses are typically associated with higher paying jobs.

The City TIF Policies state that "In the absence of unusual or extenuating circumstances acceptable to the Board, **Projects that are substantially residential will not qualify** for tax increment financing under the Board's TIF Program." This proposed TIF boundary will be home to a restaurant (old Jones Blair paint site), an office building (under construction) and an apartment complex (under construction). In information provided by the applicant, it appears that the apartment complex constitutes 71 percent of the estimated value. This project appears to be "substantially residential."

3. STATE OF TENNESSEE ROLE

The Tennessee Comptroller of the Treasury has an oversight role regarding TIF applications submitted to city and county governments. Tennessee Code Annotated Section 7-53-101(13) spells out the kinds of "projects" which are eligible for TIF funding in Tennessee. New provisions adopted in 2012 identify three types of projects that require state approval. The proposed MLK TIF project raises questions both with regard to eligibility and required approvals.

In defining an eligible project, the statute states that a "project" must relate to at least two items in a long list. Section 7-53-101 (13) (ix) mentions public parks, which the street extension relates to in that it will provide new access to the Tennessee Riverwalk.

The only other possible match seems to be (x), which relates to "multifamily housing facilities to be occupied by persons of low or moderate income, elderly, or handicapped persons **as may be determined by the board of directors....**"

What information will the IDB volunteer directors be given to make their “determination”? **When will they make this determination?** Wording in the Development Agreement suggests that this may happen AFTER the TIF is approved. The Economic Impact Plan the board will vote on February 12th neither obligates developer to provide this kind of housing nor does it define low and moderate income. (See discussion under “Housing Role.”)

The Comptroller’s Office published a “Roadmap to Tax Increment Financing.” It says that three types of projects now require state preapproval:

- Using TIF increment for privately owned land, improvements or equipment;
- Using TIF increment for general economic development, and
- Exceeding standard term of 20 years.

The proposed MLK Extension TIF involves privately owned land; it is for general economic development, and it could exceed 20 years.

In a conversation with the Comptroller’s Office, ATM learned that the State recently received a copy of the draft Economic Impact Plan, probably from the City’s outside counsel in Nashville.

4. BUT/FOR TEST

The City TIF application requires Developer to sign an affidavit that the project would not be financially feasible “but for” the Tax Increment Financing. Developer signed the Affidavit. Nowhere is it made clear that the private development would have happened anyway (and would have paid property taxes). What would not happen, without some form of public financing, is the one block street extension through the project.

Construction began months ago on the apartments and medical office building. The TIF has not yet been approved.

5. PROJECT COST

The **public infrastructure component** of this TIF is the construction of a new one-block section of MLK Boulevard from Riverfront Parkway to the Tennessee Riverwalk, including intersection improvements and acquisition of property for the street (currently owned or controlled by the Cameron Harbor developer). The estimated cost for this short street project is \$2.9 million.

The estimated line item cost of “Road Land Acquisition and Loss of Units to Development” provided by Developer is listed at \$2 million. (It had been 1.5 million in an earlier draft.). No mention of where this number came from or whether it is based on an appraisal.

The City TIF application asks the applicant to complete a detailed cost breakdown of the public improvements project. It asks for quantity and estimated cost of such things as street, curbs, sidewalks lighting, landscaping, and traffic signals. The applicant left this table blank, with a note reading "to be completed after construction documents and approvals."

A \$2.9 (formerly 2.4) million land acquisition, street construction and intersection project became a \$4.5 million TIF project. In addition to legal, closing and interest expense for three years, TIF project costs grew to include Fulton Street, a minor residential street that serves the private development, and a \$500,000 "investment into project." (This number had been \$1 million in an earlier draft.) The Economic Impact Plan states that TIF funds would be used to pay a portion ... "of constructing the medical office buildings and the multi-family housing...."

Funding this street with TIF funds could ultimately more than double the amount of taxpayer dollars involved. The proposed TIF could last up to 20 years. During that period, property taxes from the apartments, office building and restaurant would go to pay off the developer's TIF loan rather than go to the city and county general funds for fire, police, streets, parks, etc. Also, during the period the TIF is in effect, other taxpayers in Chattanooga/Hamilton County would pay the cost for any police or fire calls for service within the TIF boundary.

6. MAXIMUM TIME PERIOD OF TIF

The "term" wording has changed. Why? The November documents read that the term could last 15 years from the date the TIF District is created, (2018 under the current schedule). The December/January version reads "15 years from the date of the first TIF payment upon full reappraisal of the completed property." When would that clock start ticking? What are the **financial implications** of that wording? The claw-back section of the Development Agreement gives Developer until 12/31/2023 to make his investment in the overall project.

The City's outside counsel at the January 8th IDB hearing alluded to a maximum 18-year TIF. The legal notice for the February 12th public hearing states that term "in no case shall exceed 20 years."

Knoxville Addition-- Chattanooga's 2015 TIF policies are modeled almost word-for-word after Knoxville's. In several instances, someone weakened Chattanooga's policies in ways that provided less protection to the public. The "term" wording is an example. Knoxville's policies state that "the maximum period for any TIF will be 15 years." The Chattanooga "editor" added the word "typical" before maximum period and added a second sentence that reads: "Under certain circumstances, however, the TIF may be extended for 20 years, or the statutory limit in T.C.A. § 9-23-104, whichever is greater."

The "TIF Roadmap" put out by the **State Comptroller's** Office states: "IDB TIF plans allocating revenue for economic development for a term exceeding 20 years requires **state preapproval.**"

7. CITY ROLE AS INVESTOR

Eight public meetings have included this TIF on the agenda. (IDB, City Council, or TIF Application Review Committee.) Most of the focus has been on the approval process. There has been very little presentation to or discussion by public officials about potential policy issues, including the City and County's joining the development team as an investor in the project relative to the medical building, commercial space and multi-family housing.

The legal notice for the January 8th IDB public hearing did not mention the taxpayer investor role. (The ATM attorney pointed out the omission at that hearing.) The wording in the January 28th legal notice for the February 12th hearing was revised to read: **"The costs that may be covered with TIF increment can include, but may not be limited to, substantial public infrastructure and road upgrades to M.L.K. Blvd.... as well as costs associated with acquiring and constructing multi-family housing for low or moderate-income individuals and the costs associated with constructing and acquiring the property for medical office and commercial space."**

Knoxville Deletion--Chattanooga's 2015 TIF policies are modeled almost word-for-word after Knoxville's. In several instances, someone weakened Chattanooga's policies in ways that provided less protection to the public. This investor role is an example. It is not included in the list of TIF eligible costs in Knoxville. (Chattanooga's editor(s) also added language allowing the 15-year term to be extended.)

The "TIF Roadmap" put out by the **State Comptroller's** Office states: "Use of incremental revenue for land, improvements, or equipment that is to be owned by a private person or entity requires **state preapproval.**"

8. PROPERTY PUZZLE PIECES

Four parcels of land are included within the TIF boundary. All are in the vicinity of the Riverfront Parkway/West M.L. King intersection. These are the properties whose taxes would be diverted from the city and county general funds and applied to project costs in the TIF (street acquisition & construction, intersection improvements, apartments, medical office, restaurant, Fulton Street, interest, closing & legal costs.) Three of these parcels are located on the west (river) side of Riverfront Parkway. The other is located on the east (downtown) side just north of Chattanooga Whiskey.

Ownership--The Economic Impact Plan states that three of the parcels are currently owned by Newton Chevrolet, Inc. and one is owned by Evergreen Real Estate (the old Jones-Blair Paint site). Data from the Hamilton County Assessor's Office indicate that two lots have been created from Newton parent parcels on both sides of the street.

The Evergreen (Cameron Harbor) developer has indicated that the Newton Chevrolet properties are under contract, to whom ATM does not know. The identity of the owners and investors (?) would normally not be any of the public's business. However, the fact that "they" are requesting taxpayer assistance may make it our business, especially in light of what some may perceive as a crony capitalism dimension of previous PILOT and TIF projects.

Should not the names of persons who have contracted with Newton Chevrolet or others concerning these parcels be disclosed in the legal notice and be of public record?

The Evergreen developer told the Industrial Development Board that Evergreen is acting as Master Developer. He said that the apartments and businesses are being financed separately. Evergreen will be the managing partner.

The IDB Resolution referencing the Economic Impact Plan alludes to the TIF project by Evergreen Real Estate. The Development & Financing Agreement on the January 8th IDB agenda references Evergreen Real Estate on the cover page of the Resolution. Inside it states the Agreement is between the IDB and "139 Partners d/b/a Evergreen Real Estate."

What would become of the existing "street" that now runs from Riverfront Parkway to the trailhead if the new TIF street is built? It appears to be owned by Alstom Power Inc., with a 60-foot private permanent drive and drainage easement. It shows up as "9th Street Private" on the preliminary site plan for "Newton West" prepared by Evergreen Real Estate. A portion of it appears as part of a new parking lot for Evergreen apartments.

Zoning—The zoning of almost all of downtown changed in 2016 to new districts created under the City's Form Based Code (FBC). This zoning extends from the Northshore south to I-24 and east to Lindsay Street (UTC is excluded) or near Central Avenue.

The western boundary, for whatever reason, was established at U.S. 27 rather than at the Tennessee River. Establishing the zoning line here meant that the rapidly growing area along Riverfront Parkway could retain or obtain C-3 zoning. A project consultant called C-3 the "Wild West" zone. Here is an example. New apartment complexes in the FBC area must provide at least one parking space per unit: C-3 has no minimum parking requirements. The entire Cameron Harbor development is zoned C-3.

On-Street Parking-- The City recently completed a redesign of Riverfront Parkway from MLK to the Olgiati Bridge. It will provide bike lanes and slow down traffic. This project created 138 new parking spaces on Riverfront Parkway. The most likely users will be residents of the Cameron Harbor properties on either side of the street.

9. CITY AS IMPARTIAL DECISION-MAKER

The City Mayor's executive staff has pledged "to work expeditiously with Developer to publicly support the City Council and the IDB's imposition of a TIF District." Can the City be an impartial decision-maker and negotiate the best deal for local taxpayers when they are an advocate?

Whether the topic is TIFs or PILOTs or purchasing decisions, citizens want to believe that our local officials have structured the best possible agreements for local taxpayers. Some previous agreements have seemed one-sided in favor of development interests.

10. TRANSPARENCY

TIF and PILOT agreements appear to be **"done deals"** by the time they appear on public agendas. Here is an example regarding this proposed TIF. In his January 11th news bulletin, the City Mayor wrote: **"Soon you'll see a revamped Miller Park, new connections from M. L. King Boulevard to the Riverfront, and a complete re-imagining of South Broad."**

11. HOUSING HAZINESS

"Affordable/Workforce" Housing--The Economic Impact Plan (EIP) for this proposed TIF briefly alludes to public taxpayer dollars being used for approximately 36 units of housing for **"individuals of low and moderate incomes as determined by the IDB."** The EIP does not define low and moderate income. The IDB will be asked to vote February 12th on a Resolution that, if approved, would authorize the submittal of the EIP to the City Council and County Commission.

How can the IDB be asked to vote to move this TIF project forward without making a **determination** on the low and moderate-income piece? How can they make the determination without information on rent and commitment by the developer? This Board has no experience with affordable housing.

The City's adopted TIF policies state: "In the absence of unusual or extenuating circumstances acceptable to the Board, **Projects that are substantially residential will not qualify for tax increment financing under the Board's TIF Program.**" While an office building and a restaurant are included within the TIF Plan boundary, apartments are the largest component. Will the Board develop findings to explain the "unusual or extenuating circumstances" in this case?

Are the applicant and city administration including the low-mod aspect primarily to try to make this an eligible TIF project under state law? See earlier discussion under "State of Tennessee."

The Development and Financing Agreement for this TIF project had been on the January 8th IDB agenda. City staff pulled it from the agenda, saying it would come back at a later date, perhaps at an "emergency" meeting. ATM does not know if it will be on the February 12th IDB agenda.

We do not know why it introduces the term “workforce housing” since the state statute refers to “multi-family housing facilities to be occupied by persons of low and moderate-income.”

The early January draft of the Development Agreement defines the term “workforce housing” as “affordable housing for households with earned incomes of 80% or less” of the median income for the Chattanooga area (based on HUD data and adjusted annually). [In 2017, this amount was \$33,350 per year (\$2779 per month) for a single person. In the affordable housing world, affordable rent is capped at 30 percent of the maximum monthly income (\$834 in 2017) or else a person would be considered “housing burdened.”]

In the Development Agreement, there is no specificity about how many units within the TIF project boundary would be set aside for workforce housing or what the rents for these units would be. Apparently, all of this would be worked out AFTER the TIF is approved. Here is the wording under Section 3(e) of “Developer Obligations”:

*Prior to commencement of construction, submit to IDB for review and approval a written workforce housing plan for the Project (“**Workforce Housing Plan**”) containing adequate information necessary to assure IDB that the units will meet the IDB’s definition of workforce housing and the units will be used for this purpose until the TIF loan is repaid.*

Construction has already begun on apartments within the proposed TIF boundary. According to the language above, the Workforce Housing Plan is supposed to be submitted to and approved by the IDB prior to commencement of construction.

Whatever the IDB and Developer LATER agree to in a Workforce Housing Plan would end when the TIF loan is repaid. Long term “affordability” is not a goal.

Rent--Attached to the Economic Impact Plan is a table showing a monthly rental rate of \$980. It is not clear if any or how many of the “TIF” units would rent for this amount or what the mix is between one and two-bedroom units. In an earlier (November) version of this table, a footnote stated that the \$980 is based on the October 2017 average rent (\$980) for an apartment in Chattanooga as reported by Rent Jungle (RJ). This is the RJ average rent for a two-bedroom: a one bedroom is \$834. Would any of the workforce/affordable units be two bedroom?

Would taxpayers be asked to subsidize market rate housing, with rents for low and moderate-income persons higher than 30 percent of their monthly salary?

Recent Downtown Housing Tax Breaks--In the past five years, the City Council and County Commission have used the PILOT program to abate property taxes on five upscale apartment complexes in the downtown area:

13. WORKFORCE SUBMITTAL REQUIREMENTS

Members of the City Council and Industrial Development Board have expressed interest in the types of jobs that will be created in PILOT and TIF agreements and have inquired about previous legal actions, if any, filed in state or federal court against the benefitting company.

The Metropolitan Government of Nashville and Davidson County recently passed an ordinance addressing these issues. ATM recommends that the City of Chattanooga pass a similar ordinance. It would require the company seeking a TIF or PILOT to submit a Workforce Proposal that addresses each of the following:

1. The type and number of jobs that will be created -- both during and after construction, if any -- by the qualified company on the project, including whether those jobs will be temporary or permanent, and the number of identified jobs that will be filled by Hamilton County residents;
2. Establishment of a workforce plan disclosing: (a) whether the qualified project will involve use of temporary or staffing agencies or other third parties for identifying, recruiting or referring job applicants; (b) whether the individuals hired for the jobs identified will be employed by the company or by subcontractors or other third parties; and (c) the wages and benefits offered for the identified jobs, and a comparison of those wages to the average wage levels in Hamilton County for comparable positions;
3. The number and type, within the preceding seven (7) years, of (a) violations assessed by the U.S. Department of Labor – Occupational Safety and Health Administration and/or by the Tennessee Occupational Safety and Health Administration against the qualified company, or any contractor or subcontractor of the company retained on the qualified project; or (b) employment or wage-related legal actions filed within federal or state courts against the qualified company, or any contractor or subcontractor of the company retained on the project.

City staff would present this project proposal to City Council prior to the council's vote on the incentive and related agreement. The qualified company's project proposal would be incorporated into the agreement upon approval by City Council. To enable the continued assessment of qualified projects, and to confirm that the public interest is being served by the award of the incentive, each qualified company receiving payment-in-lieu of-taxes or tax increment financing would submit to the City semi-annual reports demonstrating compliance with the agreement. In the event such report shows that the qualified company failed to comply with its incentive agreement, the City Council could, in its discretion upon the affirmative votes of at least five members, suspend a PILOT agreement prospectively or terminate it prospectively.

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This report was prepared by Accountability for Taxpayer Money (ATM) to shed light on a complicated public financing tool known as TIF. ATM hopes it will provide food for thought for the public officials who will vote on the proposed MLK TIF and for community members interested in