



**MEETING MINUTES
NOVEMBER 17, 2016
DEANE C. DAVIS BUILDING
1 NATIONAL LIFE DRIVE, MONTPELIER
CALVIN COOLIDGE CONFERENCE ROOM, 6TH FLOOR
9:30 A.M.**

Members Present: Betsy Gentile; Patricia Horn; Michael Keane; Stephan Morse, Thad Richardson, Emma Marvin, John Davis, and Kevin Mullin

Members Present by Phone: Rachel Smith

Members Absent: Tim Briglin and Warren Kitzmiller

Staff Present: Fred Kenney and Kimberly Baker

Others Present: Bob Abramowitz, CEO and Sally Pancheri, CFO, Westminster Cracker; Lyle Jepson, Rutland Economic Development Corp.; Joan Goldstein, Commissioner and Ian Davis, Economic Development Policy Specialist, VT Dept. Economic Development; Ken Jones, Policy Analyst, Vermont Agency of Commerce and Community Development; Curt Carter, Greater Burlington Industrial Corporation.

9:32 a.m. Roll Call and Agenda Review

Chair Stephan Morse called the meeting to order.

Chair Stephan Morse requested a roll call. Members present are noted above.

Chair Stephan Morse inquired as to any additions or deletions to the agenda, hearing none, moved to the next Agenda item.

9:32 a.m. Minutes – November 3, 2016

Chair Stephan Morse inquired as to any corrections or changes to the draft meeting minutes for November 3, 2016. Chair Stephan Morse requested a motion.

- ❖ At 9:32 a.m. Michael Keane moved to accept the November 3, 2016, meeting minutes as presented. Emma Marvin seconded the motion. Chair Stephan Morse requested a roll call for the vote for the meeting minutes as corrected, all voted in favor and the motion passed. 8-0-0.
 - ◆ Aye: Chair Stephan Morse, Michael Keane, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, and Kevin Mullin
 - ◆ Nay: None
 - ◆ Abstain: None

9:33 a.m. Public Comment

Chair Stephan Morse inquired as to any members of the public present to provide public comment or announcements. Not seeing any members of the public moved to the next Agenda item.

9:34 a.m. Vermont Employment Growth Incentive (VEGI) Program

Westminster Cracker (Initial)

Policy Discussion

Changes to VEGI program made by Act 157

New Application and Write-up

- ❖ At **9:34 a.m.** Michael Keane moved to enter into Executive Session to discuss VEGI applications, citing 1 VSA, §313(a)(6). Emma Marvin seconded the motion. Chair Stephan Morse requested a roll call for the vote, all voted in favor and the motion passed. 8-0-0.
 - ♦ Aye: Chair Stephan Morse, Michael Keane, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, and Kevin Mullin
 - ♦ Nay: None
 - ♦ Abstain: None

At **10:12 a.m.** John Davis joined the meeting.

- ❖ At **10:34 a.m.** the Council exited from the Executive Session.
- ❖ At **10:36 a.m.** Betsy Gentile moved to approve the Initial application from **Westminster Cracker** of Rutland, giving initial authorization of VEGI incentives of up to \$90,792 with an estimated incentive of \$87,765, based on application data, for activity to commence January 1, 2017, citing that the Council has determined that the applicant met the But For, and met or exceeded program guidelines, subject to submittal and consideration of a Final VEGI Application before the end of calendar year 2017. Michael Keane seconded the motion. Chair Stephan Morse requested a roll call for the vote, all voted in favor and the motion passed. 9-0-0.
 - ♦ Aye: Chair Stephan Morse, Michael Keane, John Davis, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, and Kevin Mullin
 - ♦ Nay: None
 - ♦ Abstain: None
- ❖ At **10:37 a.m.** Thad Richardson moved that the Council utilize the authority given by 32 VSA §5930b(c) (5) to enhance the incentive approved for Westminster Cracker in Rutland, due to the location of the project in an economically disadvantaged region of the state, using 200% of the net revenue benefit, increasing the maximum incentive to \$194,485 and estimated to \$188,002. Emma Marvin seconded the motion. Chair

Stephan Morse requested a roll call for the vote, all voted in favor and the motion passed. 9-0-0.

- ◆ Aye: Chair Stephan Morse, Michael Keane, John Davis, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, and Kevin Mullin
- ◆ Nay: None
- ◆ Abstain: None

Chair Stephan Morse moved to Policy discussion.

At 10:30 a.m. Kevin Mullin departed the meeting.

10:38 a.m. Policy Discussion

Fred Kenney reviewed the information provided to the Council regarding the following issues which arose at the November 3rd Council meeting:

- What constitutes a material and/or substantial project change in a Final Application, compared to the approved Initial Application; and
- If an applicant approved for the LMA Enhancement reduces the proposed economic activity in their Final Application (compared to the Initial), should the Council reduce the enhancement percentage approved at the time of Initial Approval so that the incentive amount equates to the new activity level or does not exceed the Initial approval amount, whichever is higher?

Discussion ensued and the Council determined the following:

- ❖ The Council came to consensus as follows:
 - ◆ Staff will continue to detail the employment, payroll, and capex differences between the Initial and Final applications. The incentive calculation adjusts for these decreases and increases. If the change(s) impact any of the five mandatory approval criteria in effect beginning January 1, 2017, the Chair and Vice Chair will be notified to determine if the company should appear before the Council for consideration of the Final Application. The type of changes could include:
 - Net return to the state is diminished or eliminated;
 - Municipal support is not expressed or changes;
 - Project would no longer conform with local or regional plans;
 - Target market becomes limited and local or changes so that the incentives would give the business an unfair competitive advantage over Vermont businesses in same or similar line of business; or
 - The But For is compromised either by actions of the company, statements of the principals, or evidence discovered by staff or others.

Chair Stephan Morse moved to the changes to the VEGI program made by Act 157.

10:56 a.m. Changes to the VEGI Program due to Act 157

Fred Kenney provided a copy of the VEGI statute that goes into effect January 1, 2017.

Fred Kenney reviewed the changes in the VEGI program noting that the Program Guideline structure has been eliminated, but there are now five mandatory approval criteria that the Council must consider to find a company/project eligible for approval.

Fred Kenney continued, providing a summary of the Act 157 changes to the overall program.

1. Elimination of education property tax stabilization as incentive.
2. Paid sick days excluded from the list of eligible benefits because they are now statutory.
3. Explicit statement in statute that VEGI will be treated as a Tax Expenditure.
4. VEGI moved in statute to new sections in Chapter 105 of Title 32, which goes into effect on January 1, 2017 and sunsets January 1, 2021.
5. Program purpose statement included in statute. The purpose of this program in statute is: to generate net new revenue to the State by encouraging a business to add new payroll, create new jobs, and make new capital investments and sharing a portion of the revenue with the business.
6. Changes to the cap structure for overall program cap and LMA Enhancement cap.
7. Elimination of the VEGI Program Guidelines and requirement for Council to have a "Finding" on five mandatory requirements.

Fred Kenney stated that he will be focusing on #6, changes to the cap structure for the overall program cap and LMA Enhancement cap, and #7, the new mandatory approval criteria.

If the Initial applications considered will exceed the \$10 million program cap or the \$1 million LMA enhancement for the calendar year, the Council must request an increase in either cap through the Governor's office to the Joint Fiscal Committee (JFC):

- The request from VEPC goes to the Governor.
- The Governor submits the request to JFC.
- To evaluate the request, the JFC must consider the economic and fiscal condition of the state, including recent revenue forecasts and budget projections (information provided by JFO); and
- The Council must provide the JFC with testimony, documentation, company-specific data, and any other information they request, to demonstrate that increasing the cap will create and opportunity for return on investment to the state.
- The JFC cannot increase the cap beyond \$15M (program) and \$1.5M (LMA). They can refuse to provide the increase above \$10 million and \$1 million.

Fred suggested several changes to the application process to ensure the Council has the information required to determine if the LMA Enhancement should be approved and that will be required to provide to the JFC.

Stephan Morse inquired what company-specific information will be provided to the JFC. As shown by the recent request for detailed information by the JFC regarding a VEGI-approved

company, it will be impossible to provide them with the level of information required by this new provision without violating the confidentiality provision in statute and the confidentiality of the applicants' business projections.

Fred Kenney stated that he agrees and will inquire with legal counsel, JFC staff, and legislative legal staff to see how this will be accomplished, or whether the statute will need amendment.

Fred Kenney also reviewed the additional criteria that are currently included in the staff write-up for LMA Enhancement eligible applicants and suggested changes to those criteria.

Discussion ensued regarding these changes and the Council came to the following consensus:

1. If a company is geographically eligible for the LMA Enhancement, the company will address the need for the enhancement within the existing "But For" statement and at the Council meeting. Additionally, the Regional Development Corporation (RDC) director will provide additional information regarding local and regional impact in their letter to the Council and at the Council meeting.
2. The changes suggested by staff to the additional criteria to be considered by the Council and included in the staff write-up for LMA Enhancement are adopted.

Fred Kenney continued by reviewing the new mandatory approval criteria for VEGI applications.

Act 157 introduced the concept of a "finding" by the Council in order to approve incentives: "Mandatory criteria. The Council shall not approve an application unless it finds:

- (1) Except as otherwise provided for an enhanced incentive for a business in a qualifying labor market area under section 3334 of this title, the new revenue the proposed activity generates to the State exceeds the costs of the activity to the State.
- (2) The host municipality welcomes the new business.
- (3) The proposed economic activity conforms to applicable town and regional plans.
- (4) If the business proposes to expand within a limited local market, an incentive would not give the business an unfair competitive advantage over other Vermont businesses in the same or similar line of business and in the same limited local market.
- (5) But for the incentive, the proposed economic activity:
 - (A) would not occur; or
 - (B) would occur in a significantly different manner that is significantly less desirable to the State."

Fred stated that the new language is clearer and more definitive, stating that incentives cannot be approved unless there is a positive finding for all five criteria. The staff write-up will be changed and the Council motions should change to reflect a "Finding" by the Council.

In some cases, not all information required to make a definitive finding will be available at the time of an Initial Application. Therefore, the motions to approve Initial Applications may need to include a notification of a conditional finding, identifying any mandatory criteria which will need to be addressed in a Final Application.

The Finding involves the following Mandatory Criteria:

1) Is there a net revenue benefit to the state? As it always has been, this will be based on the cost-benefit model output and calculation of the incentive based on project data inputs. The Council discussed whether any additional information should be provided beyond what is currently provided. The consensus was to make no changes for this requirement.

Emma Marvin inquired if we could extend the length of time for which we measure benefit to the State, beyond five years, to help communicate why a decision was made to approve an application. Ken Jones stated that we could. The way to do that without requiring additional years of data from the applicant and adding to the complexity of the application is to assume flat-line activity after year five and evaluate the fiscal benefit. Fred will discuss with Ken and bring it back up at the December 8 meeting.

2) Does the host municipality welcome the new business? Under current law, this is addressed under Guideline 4: "The enterprise should be welcomed by the host municipality..." Currently, a letter from the host municipality is required to be uploaded to the application. This will be continued in the new application.

3) Does the proposed economic activity conform to applicable town and regional plans? Under current law, this is addressed under Guideline 4: "The enterprise should be welcomed by the host municipality and should conform to all appropriate town and regional plans..." Like #2, currently a letter is required from the host municipality. We also require that letters from the Regional Planning Commission and RDC be uploaded to the application. Both entities are directed to address conformance with local and regional plans in their letters. The Council discussed whether any further information is required for this finding and agreed to maintain current practice.

4) Does the applicant operate in, or propose to expand within, a limited local market and would the incentives give the business an unfair competitive advantage over other Vermont businesses in the same or similar line of business and in the same limited local market? This is the same as current Guideline 9. The Council agreed that we can keep the same format as in the current application.

5) Would the activity occur at all, or occur in a significantly different manner that is significantly less desirable to the State, without the incentive. Although the language is slightly different, this is the But For in current law.

Fred Kenney briefly discussed changes to the online application: Staff is making substantial changes to the 2017 VEGI application and instructions. The change in law completely eliminates the concept of Program Guidelines, but some of the Guidelines become mandatory. They are either added to the Mandatory Approval Criteria or they are subsumed in the program definition of a "Qualifying Job."

This will mean a substantial reduction in the number of forms and the amount of information required by the VEGI application, in the amount of staff research required, and the length of the staff write-up for each application. We are also putting the Pre-Application online.

Due to time constraints, Fred will put off demonstrating the new online application and sharing a sample of the new staff write-up to the December 8 meeting.

Chair Stephan Morse stated that the next meeting is scheduled for December 8, 2016, at Downs Rachlin and Martin in Brattleboro beginning at 9:30 a.m. Fred Kenney stated that there will be one new VEGI application, several final applications, one extension and three affirmations after businesses were acquired.

Chair Stephan Morse inquired as to the status of the Act 157 report for the December meeting. Fred Kenney stated the Council will be reviewing the final draft of the report. The report is due January 15, 2017.

Chair Stephan Morse stated that the Executive Director of VEPC is appointed by the Governor and at this time of transition to a new Governor, it would be in the Council's best interest to convey to the Governor-elect the excellent work Fred Kenney has done over the last 15 years.

- ❖ At 11:34 a.m. Betsy Gentile moved that the Vermont Economic Progress Council send a letter to Governor-elect Phil Scott heartily recommending that he reappoint Fred Kenney as Executive Director of the Vermont Economic Progress Council. This recommendation is based on his excellent work to date. Michael Keane seconded the motion. Chair Stephan Morse inquired as to further discussion. Lyle Jepson supports this motion and stated that continuity in the field is critical to continued economic growth in Vermont. Chair Stephan Morse requested a roll call for the vote, all voted in favor and the motion passed. 8-0-0.
 - ◆ Aye: Chair Stephan Morse, Michael Keane, John Davis, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, and Emma Marvin
 - ◆ Nay: None
 - ◆ Abstain: None

Chair Stephan Morse turned the next Agenda items over to subcommittee Vice-Chairs for the Act 157 Report, John Davis and Emma Marvin.

11:33 a.m. Act 157

Council Discussion of Report Draft

VEGI Technical Work Group (TWG) Report

John Davis inquired as to comments received from Council members. Fred Kenney stated that he has received comments from Emma Marvin and Patricia Horn. Michael Keane has discussed some of his comment and will be submitting them via email.

The Council move through each section of the draft report providing comments and suggestions.

At **12:00 p.m.** Chair Stephan Morse and Michael Keane departed the meeting.

At **12:16 p.m.** Betsy Gentile departed the meeting.

At **12:31 p.m.** Rachel Smith departed the meeting.

Fred Kenney stated that discussion of the VEGI Technical Work Group (TWG) report would be deferred until the December meeting.

At **12:41 p.m.** Vice Chair John Davis inquired as any other business, there being none, the meeting adjourned.

Minutes prepared by Kimberly Baker: November 17, 2016

Minutes revised by Fred Kenney: November 24, 2016

Minutes approved by the Council: December 8, 2016