

MEETING MINUTES
JANUARY 26, 2017
DEANE C. DAVIS BUILDING
1 NATIONAL LIFE DRIVE, MONTPELIER
CALVIN COOLIDGE CONFERENCE ROOM, 6TH FLOOR
9:30 A.M. TO 12:30 P.M.

Members Present: Betsy Gentile; Michael Keane; Patricia Horn; Thad Richardson; Emma Marvin; and John Davis

Members Present by Phone: Stephan Morse

Members Absent: Tim Briglin; Rachel Smith; Kevin Mullin; and Warren Kitzmiller

Staff Present: Fred Kenney and Kimberly Baker

Others Present: Lori Hirshfield, Hartford Planning and Development Director; John Kessler, Agency of Commerce and Community Development General Counsel; and Richard Haesler, City of Burlington Assistant City Attorney

9:31 a.m. Roll Call and Agenda Review

Stephan Morse stated that in his absence or attendance via phone for the January, February and March meetings, as Vice Chair, John Davis will Chair the meetings.

John Davis called the meeting to order and requested a roll call. Members present are noted above.

John Davis inquired as to any additions or deletions to the agenda, hearing none, moved to the next Agenda item.

9:33 a.m. Minutes – December 8, 2016

John Davis inquired as to any corrections or changes to the draft meeting minutes for December 8, 2016, hearing none, requested a motion.

- ❖ At 9:33 a.m. Michael Keane moved to accept the December 8, 2016, meeting minutes as presented. Betsy Gentile seconded the motion. John Davis inquired as to further discussion, hearing none requested a roll call for the vote. All voted in favor and the motion passed. 7-0-0.
 - ◆ Aye: Chair Stephan Morse, Betsy Gentile, Michael Keane, Patricia Horn, Thad Richardson, Emma Marvin, and John Davis
 - ◆ Nay: None
 - ◆ Abstain: None

9:34 a.m. Public Comment

John Davis inquired as to any members of the public present to provide public comment or announcements, hearing none, moved to the next Agenda item.

9:34 a.m. Updates

Fred Kenney provide updates stating that the Agency of Commerce and Community Development (ACCD) has a new Secretary, Michael Schirling and Deputy Secretary Ted Brady. They will introduce themselves at the February meeting.

Fred Kenney continued stating there is an executive order to realign ACCD with the Department of Labor and create a new Agency of Economic Opportunity. This should not have any impact on VEPC. There could be some positive aspects such as access to Department of Labor data. The reorganization is not final and has to be approved by the legislature.

Fred Kenney stated the Act 157 reports are published and submitted to Legislature. This includes the VEGI Policy Report, a Housing Report and the VEGI Technical Working Group report. There has been testimony from the VEGI Technical Working Group in the Senate Economic Development Committee and House Ways and Means.

Fred has testified in House Commerce, House Ways and Means, and Senate Economic Development on VEPC, VEGI, and the Act 157 VEGI report.

Fred Kenney noted that there is a workforce Housing Bill which focuses on the lack of middle income housing. One of the proposals is to increase the number of Tax Increment Financing (TIF) districts, lifting the cap. This would be good for economic development but would mean more work for this Council. There is a coalition being formed by David White of White and Burke, to bring together municipalities and other interested groups to support the effort. The Economic Development Bill that will be introduced will include the proposal to lift the cap on TIF Districts. If the legislature allows more TIF Districts but imposes a cap, there will need to be some type of selection process or criteria to allow a selection process. The earliest this could potentially go into effect is July 1, 2017.

Betsy Gentile inquired as the number of communities that would be interested in applying for a TIF District. Fred Kenney responded that there are currently 10 communities interested with approximately two communities ready to apply.

Fred Kenney continued stating another item that will be proposed in the Economic Development Bill is to earmark 10% of the incremental revenue generated by VEGI projects to the Vermont Training Fund. This incremental revenue is generated from the VEGI program and currently goes into the General Fund which also pays for the yearly incentive payments. In other words, the incremental revenue generated from the VEGI program would be directed to the Vermont Training Program, in addition to its annual appropriation.

Fred Kenney stated a request for reappointment will be submitted to the Governor's office for Patricia Horn, Michael Keane, Rachel Smith, and Betsy Gentile. Tim Briglin has decided to not request reappointment due to his commitments at the State House. Tim Briglin will remain until his term ends March 31st. The Council will need to provide recommendations to fill that seat. Warren Kitzmiller is no longer on the House Commerce Committee so we will receive a new appointee for that seat. Kevin Mullin anticipates remaining but the final decision is with the Senate Committee on Committees.

Fred Kenney noted that the mileage rate has decreased \$.05 down to \$.535 per mile. This went into effect January 1, 2017.

John Davis inquired as to any further updates, hearing none, moved to the next Agenda item.

9:45 a.m. Tax Increment Financing Districts (TIF):

- **Hartford Downtown District: Phase 3 filing**
- **Burlington Waterfront District: Recommendation to Secretary**

Fred Kenney reviewed the process utilized when some municipalities originally applied for a TIF District. As part of the approval process, Burlington Downtown and Hartford were required to submit phase filings. This policy and procedure allowed for the approval of applications with complex TIF Plans that are expected to proceed in phases or have a great degree of implementation variability.

The requirements of Hartford's Phase Filing were included in the Final Determination document, as follows:

- Each subsequent development phase must be consistent with the approved TIF District Plan and TIF Financing Plan and, if appropriate to the phase, address the following criteria which were partially approved:
 - Financial Plan
- Each subsequent development phase filing must include, at a minimum:
 - Identification of the infrastructure project(s) included in the phase, including description, cost, construction schedule, and proportionality information;
 - Identification of the real property development(s) included in the phase;
 - Identification of the type and amount of debt that will be incurred for the phase, including financing costs;
 - The anticipated schedule for a public vote on the debt for the phase; and
 - Recalculation of the TIF debt and revenue spreadsheets to reflect the impact of the actual data from the phase.
- If the phase information includes a substantial change from the approved TIF Plan/TIF Financing Plan, the municipality must also address that change by following the "Policy and Procedure for Substantial Change to an Approved TIF Plan."

In January 2014, Hartford submitted and the Council approved a Phase One filing. That phase initiated the TIF and included the incurrence of the Town's first instance of TIF debt for

infrastructure related to the Prospect Street project. Both the public infrastructure and the private development are substantially complete and the building is occupied.

In January 2016, Hartford filed, and the Council approved, Phase II for parking lot reconstruction and resurfacing, striping and lighting improvements.

Hartford is now proposing Phase III which includes improvements to Currier Street Extension, North Main St, Bridge St, Gates Street, and South Main Street with an estimated cost of \$1.926 million. The Town anticipates seeking voter approval at Town Meeting in March, incurring debt immediately thereafter, and commencing improvements in the summer of 2017.

Fred Kenney introduced Lori Hirshfield, Hartford Planning and Development Director.

Lori Hirshfield reviewed the proposed improves for the Currier Street Extension; North Main Street, Bridge Street to Joe Reed Drive; Gates Street, Church Street to Joe Reed Drive; North Main Street, Bridge Street to Joe Reed Drive; South Main Street, Joe Reed Drive to Nutt Lane; and South Main Street, Joe Reed Drive to Nutt Lane.

Loir Hirshfield continued reviewing the real property developments included in this phase filing as housing at 241 South Main Street; Taps and Tacos Restaurant (South Main St); Mixed-use with affordable housing at Bridge and North Main Streets; and an Assisted Living Facility at Currier and Gates Streets.

Patricia Horn inquired if any piece of this filing were not to be approved with these projects be at risk. Lori Hirshfield responded the assisted living facility would be at risk in addition to some of the street projects. Some would change to a less desirable project or may not happen until a much later date.

Fred Kenney inquired as to any major projects or developments that are expecting to occur because of the infrastructure done to date or that will be occurring? Lori Hirshfield responded yes noting that there are several storm water drainage issues, water improvements and underground utility upgrades that need to be completed to increase capacity before properties can be developed.

Michael Keane inquired if there are any aspects of this filing that are materially different from the original application. Lori Hirshfield responded no and noted that there have been more private developers stepping forward than expected.

Patricia Horn stated that if this for the engineering work only, when do you anticipate returning for the next Phase filing. Lori Hirshfield stated that was correct and anticipate return in January 2018, with the construction portion of the projects. This engineering will determine the time, scope and cost for the next Phases.

- ❖ At 10:20 a.m. Michael Keane moved to find that the Phase Filing is consistent with the approved TIF District Plan and that it is financially viable, approving this Phase. Betsy Gentile seconded the motion. John Davis inquired as to further discussion, hearing none requested a roll call for the vote. All voted in favor and the motion passed. 7-0-0.
 - ◆ Aye: Chair Stephan Morse, Betsy Gentile, Michael Keane, Patricia Horn, Thad Richardson, Emma Marvin, and John Davis
 - ◆ Nay: None
 - ◆ Abstain: None

At 10:20 a.m. Richard Haesler, Burlington City Assistant City Attorney joined the meeting. John Davis withdrew from the discussion and will abstain from the vote with regards to the Burlington Waterfront TIF District.

Fred Kenney stated that the Legislature created two TIF Districts: Burlington Waterfront and Winooski. Any actions on the Burlington Waterfront TIF District, such as the extensions have been approved, all went through Legislature. Once VEPC was tasked with approving TIF Districts, the oversight and monitoring of these two TIF Districts was assigned to VEPC. As part of the TIF Rule the older TIF Districts were required to file a reconciliation report as applications were not required at the time they were created. When Act 60 passed Burlington Waterfront was approved for use of the Education Property Tax. The reconciliation report served as the basis for oversight and monitoring. Any changes would follow the new process for substantial changes. The substantial change process was utilized for the Burlington Town Center project. In addition, approval from the Legislature was obtained to extend the life of the TIF District for those parcels impacted by the Burlington Town Center project.

Fred Kenney continued stating the municipality went to the voters in November 2016, requesting approval to incur debt for this TIF District. Documents were provided to VEPC for review and during the review of the City of Burlington's vote on debt for the Burlington Waterfront District, staff found that the City technically violated Section 718 of the TIF Rule. The Rule also provides a process if an issue or problem is revealed or discovered. The process requires VEPC to provide a recommendation to the Secretary prior to issuance of a decision. When preparing recommendations, the Council is required to provide the municipality with a reasonable opportunity to submit written information in support of its position. Once a recommendation has been provided, the Secretary has 60 days to issue a final written to the municipality on the matter.

During the review it was discovered that the TIF Rule, which was adopted in 2015, has contradicting sections with regards to the voter notification: TIF Rule Section 718 and Section 1003.2.2. Section 718 requires that a public hearing on a TIF debt proposal be held prior to a vote by the municipal legislative body to include a resolution on the ballot. Section 1003.2.2 states that the debt question must be approved by a vote or resolution of the municipal legislative body in accordance with the municipal charter, an informational notice must be made available to the public, and public notice must be provided as part of at least one public hearing.

- ❖ At 10:29 a.m. Stephan Morse moved to recommend to the Secretary of Commerce that the Secretary issue a finding of technical non-compliance with TIF Rule Section 718, specifically that the vote of the City Council occurred prior to a public hearing on the matter. The recommendation notes that the finding has not resulted in the improper reduction in the amount due the education fund and requires no further action. This resolution further recommends that future process to obtain a public vote to authorize TIF debt include a public hearing prior to the vote by the City Council on the matter. Emma Marvin seconded the motion. John Davis inquired as to further discussion.

Richard Haesler stated the City has reviewed the information, the finding and submitted the City of Burlington's response. The City of Burlington has engaged in a process consistent with Section 1003.2.2. in which the publically warned meeting occurs after the question has been placed on the ballot. Until such time that the question is placed on the ballot it is unclear as to the what the ask and the final numbers are that will go to the voters. This is the process followed while the statue was silent about when the public hearing was to be held. The City of Burlington stands by their representation that their staff work hard to comply with all TIF rules and regulations and in this particular instance the City truly thought that it was in compliance by holding the public hearing on the public notice information after the City Council had approved the ballot question. Patricia Horn stated that based upon the information provided that the City of Burlington complied with the spirit of the Rule and laws and that this was a technical error with no intent to bypass the process. John Kessler stated the intent of the Rule and the law is to ensure due process of notice, opportunity to be heard, and a decision based on the evidence. Richard Haesler stated that the City of Burlington held over 50 public meetings with regards to this project. Michael Keane inquired vote outcome. Richard Haesler stated approximately 5,800+ yeas to 4,100+ nays. Fred Kenney stated that the Council's action is a recommendation to the Secretary of the Agency of Commerce and Community Development who then has 60 days to issue an opinion. Stephan Morse stated this motion was made based upon the information provided that there is a very minor technical flaw in the process, make the recommendation to the Secretary and follow through with correcting the flaw in the Rule.

At 11:00 a.m. John Davis inquired as to any desire to amend the motion currently on the floor which has been seconded. Hearing none, requested a roll call for the vote. A roll call was taken, all voted in favor and the motion passed. 6-0-1.

- ♦ Aye: Chair Stephan Morse, Betsy Gentile, Michael Keane, Patricia Horn, Thad Richardson, and Emma Marvin
- ♦ Nay: None
- ♦ Abstain: John Davis

11:02 a.m. Windham County Economic Development Program (WCEDP):
- 2016 Competitive Grant Round

Fred Kenney provided an overview of the program, the process and reviewed data and charts for the current status of the program. Discussions are being held with the new administration as to how they would like to continue to the administration of this program, such as the application process, Governor's involvement, and administration of the revolving funds.

John Davis stated that it is important that although there is only one project for this round of competitive funding, there have been many loans and other activity with regards to these funds and there are several projects in the "pipe line."

Fred Kenney continued stating for 2016 there were three applications with only one making it to this level. The application has gone through the Letter of Intent process, a scoring process and is now with the Council for final consideration with regards to providing a recommendation to the Governor.

Fred Kenney reviewed the current application being considered noting that this is a good organization with a good goal. The project is good and the training that is being proposed is worthy and needed. This organization was provided feedback and additional time to provide greater detail and information in the following areas: leveraging funds, matching funds, sustainability, obtaining startup funds as these funds are not identified for the training, the two-year process to obtain the Department of Labor's approval of the curriculum and commitments of collaboration and cooperation with other organizations.

Betsy Gentile stated a concern with the salaries/wages budget line of \$73,470 and that there would only be a less than half time office manager and a volunteer Executive Director. Additional, there was no solid demonstrated market need for this program.

Fred Kenney stated that the Council can recommend the application with conditions and the conditions would then be incorporated into the Grant Agreement as part of the performance requirements. The Council could also not recommend the application and suggest they resubmit in the next round.

Patricia Horn state this type of training is very much needed as building systems are becoming more technical in operating and maintaining, but the application does not show a sustainable project.

- ❖ At 11:21 a.m. Michael Keane moved to not recommend this project to the Governor. Thad Richardson seconded the motion. John Davis inquired as to further discussion, hearing none requested a roll call for the vote. All voted in favor and the motion passed. 7-0-0.
 - ◆ Aye: Chair Stephan Morse, Betsy Gentile, Michael Keane, Patricia Horn, Thad Richardson, Emma Marvin, and John Davis
 - ◆ Nay: None
 - ◆ Abstain: None

At 11:22 a.m. John Davis stated the Council should authorize staff to pursue amendment to the TIF Rule to obtain consistency between the sections discussed earlier.

- ❖ At 11:22 a.m. Emma Marvin moved to pursue an amendment to the Tax Increment Finance (TIF) Rule, adopted May 6, 2015, to ensure consistency of Section 718 and 1003.2 within the Rule. Betsy Gentile seconded the motion. John Davis inquired as to further discussion, hearing none requested a roll call for the vote. All voted in favor and the motion passed. 7-0-0.
 - ◆ Aye: Chair Stephan Morse, Betsy Gentile, Michael Keane, Patricia Horn, Thad Richardson, Emma Marvin, and John Davis
 - ◆ Nay: None
 - ◆ Abstain: None

Michael Keane, on behalf of the Bennington Select Board, extended a thank you to Fred Kenney for presenting an educational information session on Tax Increment Finance (TIF) Districts to the Select Board and community members.

John Davis noted that the next meeting is scheduled for February 23, 2017.

John Davis inquired as to any other business, there being none requested a motion to adjourn.

- ❖ At 11:29 p.m Michael Keane moved to adjourn the meeting. Patricia Horn seconded the motion. John Davis requested a roll call for the vote, all voted in favor and the motion passed. 7-0-0.
 - ◆ Aye: Chair Stephan Morse, Betsy Gentile, Michael Keane, Patricia Horn, Thad Richardson, Emma Marvin, and John Davis
 - ◆ Nay: None
 - ◆ Abstain: None

Minutes taken by Kimberly Baker: February 3, 2017

Revised by Fred Kenney: February 5, 2017

Approved by the Board: February 23, 2017