



**MEETING MINUTES
JANUARY 31, 2019
DEANE C. DAVIS BUILDING
1 NATIONAL LIFE DRIVE, MONTPELIER**

**CALVIN COOLIDGE CONFERENCE ROOM, 6TH FLOOR
9:30 A.M. TO 11:45 A.M.**

Members Present: Chair John Davis, Michael Keane, Mark Nicholson, Jean O'Sullivan, Rachel Smith

Members Present by Phone: Stephan Morse, Patricia Horn, Betsy Gentile

Members Absent: Thad Richardson, Emma Marvin

Staff Present: Megan Sullivan, Executive Director; and Abbie Sherman, Grant Programs Manager

Others Present: John Kessler, ACCD General Counsel; Ken Jones, Economic Research Analyst, ACCD; Joan Goldstein, Commissioner, DED; Michael Schirling, Secretary, ACCD; Dominic Cloud, City Manager, City of St. Albans; Chip Sawyer, Director of Planning & Development, City of St. Albans; Tom Leitz, Director of Administration, City of St. Albans; Stephanie Hainley, White& Burke; J. Paul Giuliani, Attorney; Lori Hirshfield, Director of Planning & Development, Town of Hartford.

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

Chair John Davis called the meeting to order.

Chair John Davis requested a roll call. Members present are noted above.

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

9:34 a.m. Minutes – December 14, 2018

Chair John Davis inquired as to any corrections or changes to the draft meeting minutes for December 14, 2018. Hearing none, requested a motion.

- ❖ At 9:34 a.m. Michael Keane moved to accept the December 14, 2018, meeting minutes as presented. Mark Nicholson seconded the motion. Chair John Davis inquired as to further discussion, hearing none requested a roll call for the vote. All voted in favor and the motion passed. 8-0-0.

- ♦ Aye: Chair John Davis, Michael Keane, Mark Nicholson, Jean O'Sullivan, Rachel Smith, Stephan Morse, Patricia Horn, Betsy Gentile
- ♦ Nay: None
- ♦ Abstain: None

9:35 a.m. Public Comment

Chair 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.

9:35 a.m. Tax Increment Financing Districts (TIF)

St. Albans Substantial Change Request:

Megan Sullivan provided the Council with a summary of the substantial change request by St. Albans. The city was required to submit a revised Financing Plan as prescribed in their Authorization Document. Due to changes in project costs, the city opted to submit a substantial change request. Megan noted that the situation surrounding the request is unique because the city is approaching the end of their performance audit by the State Auditor's Office. There is significantly more information available due to the audit. Megan provided the Council with a summary of the considerations in making a determination regarding the substantial change request and noted that the Council has 60 days for the process per TIF Rule. In summarizing the request by St. Albans, Megan advised that there is not increase in TIF debt, however the city is looking for approval specific to changes in project costs. These changes include an increase in the core brownfields project and a decrease in the Federal Street multi-modal project. Megan noted that the Council may want to discuss additional considerations, those being: the city's working cap reserve fund; the use of parking garage fees which were approved in original Authorization Document and have been excluded from the revised Financing Plan; and the proposed increase in the municipal increment share to 100% from 75%.

Chair John Davis noted that the goal of this meeting was educational and that he did not expect there to be a vote on the matter today. He also noted that he requested representation from the State Auditor's Office (SAO) to offer their input regarding progress of the St. Albans performance audit, as well as John Kessler for response to any legal questions.

Dominic Cloud described to the Council the position St. Albans was in prior to approval of their TIF District 10 years. He expressed his gratitude for TIF and the benefits it has provided to St. Albans. Dominic noted Grand List growth of \$52 million, where the city had been experiencing a decreasing Grand List prior to the TIF, serving as an example for other communities. He summarized Appendix A of their request noted that: \$16 million in projects has been completed, \$2.5 million is pending, and the city is proposing to issue another roughly \$3 million in debt to complete projects. Dominic advised that St. Albans is waiting for a draft of the performance audit report from the SAO and he reviewed the definition of substantial change. He stated that through discussions with their consultants and prior VEPC staff they have never had any suggestion that they should submit substantial change request. Dominic reviewed the areas of their request. He

noted that their working capital reserve fund is a common finance tool, particularly where the increment intended to service the debt is backloaded. While projects have cost more than originally anticipated, the city believes it is not in a way that has impacted financial viability. The city is asking the Council for concurrence that a working capital reserve is appropriate to use in TIF context. Dominic demonstrated to the Council how the city meet has met the project criteria for this TIF District in the areas of brownfields and transportation. While the city does not feel they need submit a substantial change request, they have due to the extent that the SAO believes they do need to. Regarding parking fees, Dominic noted that the city has retained 100% of the municipal share of increment, as well as adding general fund transfers. He also noted that the city is prepared to accept as a condition that if the increment is insufficient to repay the working capital reserve, the city will take on that obligation through a bond refinance note.

At the request of Chair John Davis, ACCD General Counsel John Kessler offered his opinion regarding the working capital reserve fund and the opinion from the Attorney General's Office regarding the need for St. Albans to submit a substantial change request. John Kessler advised that the use of capital reserve funds preexisted TIF and VEPC's role and that these types of funds are not at all uncommon. The ability to use a capital reserve fund, even if it was not disclosed in the TIF District Application, is implicit because it is a common tool used by municipalities. The question now is with regard to education fund revenue. John Kessler's understanding is that capital reserve funds that are set aside must be used exclusively on TIF projects, however he noted that this is not precisely stated anywhere. With regard to the need for a substantial change request, John Kessler noted that notifying the Council of the use of a working capital reserve fund alone is not enough to require a substantial change request but could be part of the annual reporting. Substantial change would be used for unanticipated change that is significant. The trade of for accessing education fund tax revenue is State oversight. The State has a vested interested in allowing municipalities to use increment but at the same time make sure State objectives are achieved. VEPC should have an opportunity to look at substantial changes as regulating role to ensure that everything is within the bounds and purpose by which the District was approved.

Chair John Davis then asked Tanya Morehouse of the SAO to provide the Council with any information they have. Tanya summarized for the Council the evolution of regulation and oversight of the TIF District, noting that the SAO completed a round of audits that pre-dated VEPC's involvement. Tanya also summarized for the Council the parameters by which the SAO audited the St. Albans TIF District which included adherence to Statute and TIF Rule, review of record keeping, and validating that the municipality retained the appropriate amount of revenue. She noted that in the process of the audit, issues came to their attention that related to activity in prior years they looked at the city's records and audited financial statements. The SAO consulted with Attorney General's office on issues concerning substantial changes, tax status of the parking garage, and use of TIF debt proceeds to pay debt. Tanya noted that the audit has not been finalized and that city management has an opportunity to review and provide additional information, as well as an opportunity to comment on draft audit report. In regards to the question of substantial change, Tanya noted that there were categories in the city's internal tracking that didn't agree to projects as outlined in the TIF application. The SAO also noted that

projects costs were much higher than in the TIF application, for example the Core Brownfields. Other information that SAO has noted as a result of the audit involved (1) project costs and related costs related to the hotel which may not be the type of cost envisioned in the Core Brownfields costs; (2) parking garage revenues attributed to a \$2.5 million agreement with the developer for 27 Federal Street which included perpetual parking. It was not clear what amount from that agreement would be for parking and the revenues were not placed into the TIF Fund to repay debt; (3) the use of debt proceeds to pay debt. The SAO's draft guidance from the Attorney General's Office is that this is not an allowed use for a TIF district. A copy of that guidance cannot be provided until it is finalized.

Dominic Cloud offered a rebuttal to the information provided by the SAO. With regard to the development agreement, he noted that the city had provided two scenarios in their application to VEPC: (1) no hotel; or (2) hotel where the city would offer \$2.5 million to the developer as project incentive. Parking rights which were sold to another developer and paid for with new market tax credits. The hotel developer needed \$1 million in equity investment; the other \$1.5 million was moved to a redevelopment fund to catalyze other projects within the TIF District. Regarding the Core Brownfields site, Dominic advised that there had been a change in city's TIF program and VEPC staff authorized the brownfield program to expand throughout the downtown core, increasing the costs. He declared that higher costs alone are not substantial change and that substantial change is triggered when higher costs threaten financial viability of TIF or not following through with projects that were required to meet project criteria.

Tom Leitz followed up regarding the taxability of the parking garage and noted that, if the city were to agree with the Attorney General's Office opinion, it will be difficult to assign a value to an asset that loses money every year. Paul Giuliani added that in the general definition for improvements under indebtedness, working capital reserve funds and other soft costs are included and can be financed with long-term bonds.

Chair John Davis then inquired as to any further comments or questions from the Council. He advised that the Council intends to reconvene at a later date for further discussion.

The Council recessed at 10:34 a.m., reconvening at 10:45 a.m.

Hartford Phase Filing Update:

Megan Sullivan advised the Council that the Hartford TIF District will be in attendance at the February meeting with a potential substantial change request and for review their next Phase Filing for the bond vote that will occur on Town Meeting Day. The purpose of today's meeting is to provide the Council with background information to allow for a potential determination at the February meeting.

Lori Hirshfield reviewed for the Council the boundaries of the Hartford TIF District and provided an overview of projects completed today. The current proposal is for \$5.5 million in improvements to include rehabilitation or replacement of old sewer, stormwater, and water

system. She noted that it has been 10 years since the initial conceptual engineering was completed and the town now has a better understanding of the work that needs to be undertaken, noting that cost have risen. The town has been reviewing scenarios for financing the project, one option being a combination of bond funds and the State revolving loan funds. The town is currently in the application process for the revolving loan funds. Lori advised that the TIF District has been approved for \$13 million in debt and the voters have approved \$3,726,000 to date, leaving a balance of 9,247,000. After the forthcoming Phase Filing, \$3.7 million will be remaining. Lori reviewed with the Council Hartford's projected cash flow with this Phase Filing and noted that the town may not have sufficient funds at end of life of the bond period. The town does have access to other sources of revenues, including enterprise funds and continuing to retain the municipal portion of tax increment beyond the 20 years. The Hartford Select Board held a public hearing on January 29 as part of the substantial change request requirements. Hartford has also drafted bond language in the event there is an opportunity to reuse previous voter-approved funds. With regard to the substantial change request, Lori noted that there are questions that are unanswered at this point for future Phase Filings. As an example, Hartford's TIF Plan originally included a parking structure and the town is now navigating whether to go forward with that project in the traditional way. Given the uncertainties surrounding remaining projects, Lori requested guidance from the Council as to when the appropriate time would be for the TIF District to submit a substantial change request.

Patricia Horn suggested that Harford wait to file a substantial change request, noting that they have made the Council aware of the status of the TIF District. She conditioned that with the request that Hartford give the Council an estimate of what the time frame would be for when their costs would be updating, noting that the revised costs will determine the level of substantial change. In response, Lori noted that the forthcoming Phase Filing has a solid financial plan. She continued that Harford recognizes that any future Phase Plan may trigger need for substantial change. At this point, she is inquiring as to whether VEPC agrees with their prospective, as well as if there is any additional information that should be provided for the February meeting.

Chair John Davis advised that VEPC staff would advise of any questions the Council may have. Megan Sullivan will follow up with Hartford on what should be included in the February submission.

11:00 a.m. Executive Director Updates:

Megan Sullivan provided the following updates to Council:

- All TIF District Annual Reports have been received by staff. Abbie has reviewed each report and requested clarification or additional information where needed. TIF Districts are required to complete certification by February 15 and submit to VEPC. Independent audits will come by April 15.
- 2018 VEGI Claim Forms have been sent out to VEGI participants.
- The Council was provided with opinions from the Attorney General's Office regarding the St. Albans performance audit on: (1) parking garage taxability, and (2) substantial change. Megan advised that the parking garage opinion has come up previously with

the Winooski TIF District. It is unclear what St. Albans will opt to do with that information. The issue also came up with the Montpelier TIF District and may come up in the future. She noted that the Council should be prepared to look at this topic more closely as more districts reviewed. Regarding the opinion on substantial change, Megan believes the opinion has extensive reach on what substantial change is and advised that it may be helpful for Council to discuss what the standard for substantial change is. The matter should also be reviewed when updating the TIF Rule to make it clear for districts and review its adherence to Statute. Megan noted that, as the Council heard today, there is a draft opinion on working capital reserve fund. This opinion could potentially play into what the Council's determination is for the St. Albans substantial change request.

- Megan updated the Council on the Think Vermont Innovation Program. The Council has review authority of that program which has been designated to the Executive Director. She noted there were a significant number of applications and for more than the amount of funds available. Industry and regional representation in the applications was great and they are currently with the Secretary of ACCD. A presentation to the Council will be forthcoming. Michael Keane requested a breakdown of where the applications came from.
- Megan provided the Council with an update on the VEGI cap watch. She noted that half of the final cap for LMA enhancement has been used and \$2 million toward VEGI cap assuming all five 2019 applications move forward. An updated comparison for the 2018 MSI VEGI Application was provided in the Council's packets.
- For legislative updates, Megan noted the a modernization package for VEGI which would: (1) add enhancements for companies working on clean water initiatives as Green VEGI, small businesses of 19 or fewer employees, and mission-based businesses; (2) eliminate the LMA cap; (3) tie wage threshold to livable wage which would match VEGI to the Vermont Training Program; and (4) give the option to receive award payout in first year of an award with strong recapture component if targets are not maintained. Currently if a company doesn't maintain their targets, then there isn't a recapture of what they've received. The option would be beneficial to small businesses to solidify growth. The option would require Council approval at review of the application.
- There are two communities who may potentially apply for a TIF District, those being St. Johnsbury and Springfield.

Rep. Jean O' Sullivan inquired as to whether there is the potential to streamline paperwork for small businesses applying to VEGI. Megan Sullivan noted that it is not likely due to the terms needed to run the REMI model. Megan also noted that while VEPC has a partnership with the RDCs, staff is also looking to work to strengthen relationships with SBDC and other technical system providers.

11:15 a.m. Pew Institute Report Discussion

Rep. Jean O'Sullivan led the discussion. She noted that VEGI is 45 out of 50 states in terms of transparency and the ability to be audited because it is an unaudited tax program. She referenced information from the Joint Fiscal Office which mirror's Pews suggestions on how VEGI should

be audited, as well as the Auditor's compilation on literature in this area on the but for clause. She noted that this is ongoing discussion at the legislature, and she recommended the Council read the literature, look at the challenges, discuss, and make a decision on the "but for" clause. She believes that the Council should make a decision on this topic and not the legislature. The Council would make a recommendation to the legislature and the legislature would come forward with other recommendations for auditor. Patricia Horn believes there are two issues. The first being whether there should be an audit or evaluation of how effective different incentives are in terms of economic development. The second issues being to look at the structure of our incentives to see if they are effective.

Megan Sullivan suggested following up on this topic at a Council retreat. Discussion also included the possibility of asking the Joint Fiscal Office or an academic institution to conduct a study to determine what prevents a Vermont business from expanding or causes them to move out of state. There may be other sources of information, such as the regional development corporations. Megan noted VEPC would need to follow the appropriate State contracting policies to move forward with a study.

Chair John Davis noted that the next meeting is scheduled for February 28, 2019.

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

- ❖ At 11:45 a.m. Betsy Gentile moved to adjourn the meeting. Stephan Morse seconded the motion. Chair John Davis requested a roll call for the vote, all voted in favor and the motion passed. 8-0-0.
 - ◆ Aye: Chair John Davis, Michael Keane, Mark Nicholson, Jean O'Sullivan, Rachel Smith, Stephan Morse, Patricia Horn, Betsy Gentile
 - ◆ Nay: None
 - ◆ Abstain: None

Minutes taken by Abbie Sherman: January 31, 2019

Revised by Megan Sullivan: February 5, 2019

Approved by the Council: February 28, 2019