

IDAHO FALLS REDEVELOPMENT AGENCY

P.O. BOX 50220

IDAHO FALLS, ID 83405

November 20, 2014

Regular Meeting Minutes

Council Chambers

Call to Order: Chair Radford called the meeting to order at 12:10 p.m.

Members Present: Lee Radford, Terri Gazdik, Brent Thompson, Linda Martin

Members Absent: Thomas Hally, Lee Staker

Also Present: Ryan Armbruster, Legal Counsel (telephonic); Renee Magee, Executive Director; Thayne Sparks, Agency Treasurer; Kristine Staten, Idaho Falls Downtown Development; Tahri Molifua. Ball Ventures/SRL Development.

Modifications to Agenda: There were no modifications to the Agenda

Approval of Minutes: Brent Thompson moved to approve the minutes of October 16, 2014, Terri Gazdik seconded the motion and it passed unanimously.

Thompson explained he should have abstained from the vote regarding the resolution approving the urban renewal plan for the proposed Eagle Ridge renewal district at the October 16 meeting. He had done work for the lender involved in the Eagle Ridge development. Although the work was concluded and Thompson had been paid, there may be a perception of a conflict on that issue. Radford said there was a roll call vote on that agenda item and five members voted in favor (Gazdik, Halley, Radford, Staker and Thompson) and none were opposed. As such, even without Brent Thompson's vote, the vote would pass 4 to 0 and there would be a quorum. Armbruster advised, based on the limited precedent in the State of Idaho, if the action were challenged, the Court's remedy would be limited to casting Brent Thompson's vote aside, which would not impact the affirmative vote to approve the plan.

Approval of Bills: Radford presented the finance report dated November 20, 2014. The following bills were presented to be paid from the Snake River Allocation fund: Redevelopment Association, \$2,250.00 for annual dues and legislative efforts; Rebecca Thompson, \$215.00 for transcription services; Kuslan and Associates, \$7,249.11 for preparing the financial projections in the Eagle Ridge urban renewal plan; Elam and Burke, \$6,454.70 for legal services; SRL, LLC, \$170,000.00 (item not listed on the finance report), reimbursement for public improvements in Snake River Landing, Division Nos. 6 and 7. The following bills were paid from River Commons Revenue Allocation Fund: Elam and Burke, \$629.00 for legal services. **Linda Martin moved to approve the financial report, Brent Thompson seconded the motion and it passed unanimously.**

Note for Snake River Landing, Division No. 7 and Update on Note for Division No. 6. : Terri Gazdik reviewed the options previously discussed for reimbursing Ball Ventures for public improvements in Divisions No. 6 and No. 7: executing a note for \$500,000 with an interest rate of 4.5%; executing a note for \$500,000 with the interest rate of 6.25% as established by the original Owner Participation Agreement

(OPA) and existing note, thereby creating an addendum to the existing note; or borrowing funds from the Snake River Urban Renewal District to pay Ball Ventures \$500,000 in cash and, therefore, reimbursing Ball Ventures \$670,000 in cash.

Tahri Malifua, Ball Ventures/SRL Development, stated, when the original OPA note was created, it was done under certain market conditions, which the Agency has argued do not exist today. The Agency has also argued the riskiness of the note itself and the collateral has gone down, given today's economics. Malifua continued the new note, regardless of how it is paid out, is still collateralized by the same income stream under the original OPA. As such, SRL Development's position is this note is more risky than ever because Snake River Landing has not come close to generating the development necessary to get the incremental tax projected in the urban renewal plan. Even though the market has changed, the specifics of the actual note has actually worsened. SRL is asking for the higher interest rate of 6.25%.

Radford said he and Gazdik see the issue in different ways. He believes Gazdik sees it as a note collateralized and, as other notes, the Agency should look at the public market for the interest rate. Radford stated his view is there is an agreement to pay a percentage of the increment over time and, if it goes well, the principle will be paid back and maybe some interest. The interest is capped at 6.25%. Radford asked for Ryan Armbruster to explain why the Agency's commitment is structured as notes instead of an agreement to pay a percentage of the increment.

Ryan Armbruster replied, historically when urban renewal agencies began to look at developer notes as an alternative to more complicated and complex bond offerings, the option was seen as the developer standing in the shoes of a traditional underwriter or lender. If an agency were borrowing money from a bank, an agency would enter into a note. As the agency entered into the first notes with both Taylor Crossing and with Renaissance Partners, the same model as a bank loan was followed. Additionally, developers demand a note for two reasons. It is an easier enforcement proceeding if there is a default. It is easier to sue on a note than on a breach of contract claim. Additionally it is easier for the developer to assign the note to its lender. Assigning a contract is more difficult because the contract has other obligations a bank will not typically wish to assume. Finally, if a developer is looking at tax exempt financing, a note is the necessary process. There are instances where there is no note, but those are in situations with a fairly certain sum and no interest rate.

Thompson clarified this is a more flexible tool that largely benefits the developer. Armbruster agreed. A note to the developer is a much more flexible tool. It is a way in which a project can be completed quickly and places the risk on the developer. The agency is not required to go through complex due diligence with a bank or other lender or to go through the major hoops of issuing a bond. Additionally, the agency may not have a bankable note since the agency does not have a proven cash flow.

Linda Martin asked if the Agency did notes to assure the City does not have a risk. Armbruster replied the City has no risk on any bond or note since repayment is solely limited to the tax increment and is not an obligation of the City. But it is correct that the steps needed for a bond are more costly and expensive than a developer note. Martin stated an agency either issues a bond and pays the additional expense for a bond or the Agency issues a note to a developer and pays a higher interest rate since the developer is

taking the risk. Magee said, on those speculative projects with no initial clients, an agency is not able to issue a bond since a revenue stream cannot be proven.

Radford asked Terri Gazdik to state her argument for the 4.5% and he will then state his argument for the 6.25%. Gazdik informed the Board the original request to the committee was to recommend an interest rate within the range in the Amended OPA and, secondly, to determine if there was an indicator or standard to use as a guideline for interest rates in future notes. Gazdik has learned an interest rate will be dependent on the project, the developer, and the projected revenue stream, and it will fluctuate based on all of those things. Future notes cannot be measured one against the other.

Radford said he has struggled with the nature of the Agency's notes since they are not traditional notes due to the limitations within them. Legally, there is no unconditional promise to pay. Radford stated he is uncomfortable when the Agency has to show the notes as large liabilities in the financial reports since the limitations in the notes are not disclosed. The liability is to pay 75% of any increment generated plus interest if the project succeeds. Radford argued the 6.25% is the same rate as the original loan and infrastructure has been built as promised. Entering into a note saves the cash for immediate projects such as the canal bridge. It allows the Agency to have more opportunities. In addition, when one considers the tax increment projections, the Agency will not be paying more than 4.5% interest, if that amount. Radford added any policy must recognize the note has to be valued according to its nature, it has limitations and conditions, and it may not be paid in full and, therefore, will have a higher interest rate. A note that will be paid in full in a few years with little risk should have a lower interest rate.

Gazdik stated she is not concerned with the interest rate on this particular note with Ball Ventures but with the precedent it may set with other developers. Radford agreed the precedent issue is important. He believes the Agency is not establishing any precedent and each note has to stand on its own as the nature of the projects are so different. Thompson asked if the rates discussed are the only choices or do those represent a range. Radford stated the committee did its work and came with those two options. We need to decide between those two.

Tahri Malifua stated Ball Ventures discussed a compromise. The Agency could pay \$250,000 in cash and enter into a \$250,000 note at an interest rate of 4.5%. The risk to SRL Development is reduced.

Linda Martin asked what the proposals are. Radford summarized the options are to enter into a note for \$500,000 with an interest rate of 4.5%, enter into a note for \$500,000 with an interest rate of 6.25%, pay \$500,000 in cash, or pay \$250,000 in cash with a note for \$250,000 with a 4.5% interest rate. Gazdik asked if the note for \$250,000 at 4.5% interest has to be an addendum to the existing note.

Tahri said he is not sure how it will work but he assumes the original note will be paid back in its entirety. If there is still term, then it will go to the lower rate of 4.5% because the note is collateralizing the same revenue string.

Linda Martin asked if paying \$250,000 in cash will inhibit the ability to do things in the future. Magee stated there is \$421,000.00 in existing River Commons Allocation Fund. If \$250,000 is spent, there is still \$170,000 in cash remaining. Additional payments will be received in January and June. It could take slightly longer to complete a project. If you are considering the bridge over the canal, it will take two to

three years to pay a portion of the costs. Thayne Sparks agreed with Magee's projection. Radford added, if necessary, funds could be borrowed from the Snake River allocation area for the bridge.

Brent Thompson moved to approve the option suggested by Tahri Malifua, i.e., the Agency pays \$250,000 in cash towards the commitment to reimburse \$500,000 for public improvements and a note be is issued for the remaining \$250,000 at 4.5%. Terri Gazdik seconded the motion. Radford called for vote by roll call: Gazdik, yes; Radford, yes; Thompson, yes; Martin, yes. The motion passed 4 to 0.

Status of Eagle Ridge Urban Renewal Plan: Magee stated the City Council met with Meghan Conrad and Phil Kushlan in the November 10 work session. Conrad and Kushlan explained the proposed plan and the financial projections. They also met after the Council work session with two Council members and answered questions about urban renewal in general. The County Commissioners have signed the intergovernmental agreement; however, it needs to be approved by a Bonneville County ordinance. Magee will submit a draft ordinance to the Commissioners in the next ten days. Armbruster added the plan is on track. The ordinance will be provided to the City attorney for the Council public hearing as well as the resolution approving the intergovernmental agreement. Both of those documents will be circulated early next week. The City Council public hearing is scheduled for December 11 as well as the contemplated readings of the ordinance approving the plan. Armbruster added it would be helpful if some of the Board members as well as the developer attended the City Council meeting in support of the plan.

Update of RAI Activities: Ryan Armbruster stated the legislative activities are still uncertain. The organizational meetings for the Legislature will be held next week, and there may be more information after next week.

Thompson moved to enter into executive session pursuant to Idaho Code Section 67-2345(1)(c), to conduct deliberations concerning acquiring an interest in real property which is not owned by a public agency. Linda Martin seconded the motion. There was no discussion. Radford called for vote by roll call: Gazdik, yes; Radford, yes; Thompson, yes; Martin, yes.

Linda Martin moved to exit executive session, Thompson seconded the motion. Radford called for vote by roll call: Gazdik, yes; Radford, yes; Thompson, yes; Martin, yes.

Brent Thomson moved to adjourn meeting, Linda Martin seconded the motion and it passed unanimously.

Respectfully Submitted:

Beckie Thompson