

April 18, 2019

Megan Sullivan  
Executive Director  
Vermont Economic Progress Council  
1 National Life Drive, 6<sup>th</sup> Floor  
Montpelier, VT 05620

Re: Application for Substantial Change

Dear Megan,

In accordance with the attached resolution adopted by St. Albans City Council, the City of St. Albans is requesting additional approvals from VEPC through the substantial change process.

As you will recall, at the February meeting VEPC approved the City's substantial change request with the following conditions:

- the total amount of TIF debt is reduced from \$23 million to \$21 million;
- the City will repay the Working Capital Reserve Fund the amounts used to pay debt service and that fund will be used to pay for future voter-approved TIF projects; and
- the municipal share of increment is increased from 75% to 100%.

The City is appreciative of this approval and accepts the conditions.

After the February VEPC meeting, the City became aware of the following questions related to the St. Albans TIF:

1. whether the site improvements completed for the hotel were TIF eligible expenses;
2. whether brokerage fees are a TIF eligible related cost;
3. whether working capital funds can be repaid with increment; and
4. whether St. Albans placed sufficient emphasis on the term of the TIF bonds in the informational sessions for the September 2013 informational sessions.

The City therefore returns to VEPC and requests approval for the actions referenced in the above questions through the substantial change process in light of the following explanations.

### **Hotel Improvements**

The City's 2012 TIF application included plans to attract a national hotel by constructing an adjacent parking garage and completing brownfield and other site improvements on the hotel site. The hotel was one of the largest sources of anticipated increment in the City's TIF. It was described generically as Core Commercial Development in the application as the details were still proprietary to the parties. During the

VEPC hearing, the City entered Executive Session with VEPC and described our vision for the project. The City's efforts to recruit a hotel were well received by VEPC and the community and it was generally regarded as "the icing on the cake" of the City's redevelopment efforts.

At the time of the application we did not have the level of information for the site costs and brownfield cleanup that we had at later dates as to what it would take to attract the hotel. This is a common challenge with TIF districts. TIF applications are largely aspirational and based on limited information from the professionals who ultimately refine the estimates once the district is approved. The costs to develop those estimates are simply too high to justify in the absence of an approved TIF, particularly when one of the approval criteria is financial need. We estimated our costs under the Core Brownfield public project and included that as a public project in our application.

As the City's redevelopment plans progressed, we gained more information about the brownfield cleanup and site development costs on both the parking garage site and the hotel site. These costs were included in the City's annual reports to VEPC, the financing plans that were approved by the voters, and the updated financial plan that was approved by VEPC in February.

One of the questions raised focuses on \$250,000 of *improvements* that the City paid for on the hotel site. The TIF statute defines improvements as "the installation, new construction, or reconstruction of infrastructure that will serve a public purpose and fulfill the public purpose of tax increment financing districts ... including utilities, transportation, public facilities and amenities, land and property acquisition and demolition, and site preparation." It is hard to imagine a broader, more expansive definition and it aligns well with the nexus between public and private projects that is the essence of TIF.

In light of this definition the City agreed to support the hotel project by completing improvements to the site. These improvements included constructing underground utility lines, installing handicap ramps between the City owned parking garage and the hotel, streetscaping and landscaping in the adjacent alleyways, and associated overhead. The costs were reviewed by the City's consulting engineer to determine if they were reasonable and within market. The City chose to fulfill this contractual obligation by contracting with the construction manager for the hotel directly because it is a very tight site and the work was to be performed in close coordination with the hotel construction sequencing.

A second question focuses on \$186,940 for *site preparation* costs that the City reimbursed the hotel construction manager for. The same definition of *improvements* is at play and specifically authorizes site preparation costs. After our TIF application was approved, additional investigation revealed that some of the soils were characterized as "urban" and would need to go to a landfill and others, while not contaminated, would not support the loads of a 4-story building. This is common in urban redevelopment sites where the soils are comprised of diverse material. In these instances, clean fill must be brought in and the grades must be set according to the design and structural load of the new structure.

All of these cleanup activities are authorized in the Corrective Action Plan for the site that is approved by VT DEC. Based on the above definition for improvements, the City agreed to support the hotel project by addressing both the contaminated and the non-load bearing soils, all of which fit well within the definition of improvements and were necessary to make our urban site competitive with a greenfield site. We also note that any substantial building located on this site would have the same issue with urban soils.

The question about the propriety of these costs hinges on whether they benefit the public as a whole or just the hotel. This City finds this argument audacious as the entire premise of tax increment financing is the

nexus and synergy between public improvements and private investment, which is why the definition of improvements is so expansive. The City asks VEPC to concur.

### **Brokerage Fees**

Another question is whether the TIF statutes allow for a brokerage fee to be utilized as a form of payment for professional services. The City paid its primary real estate development consultant White and Burke a \$100,000 brokerage fee at the successful conclusion of the hotel transaction. This was in lieu of consulting fees, which would be paid regardless of whether we landed a hotel or not. The TIF statutes define *related costs* as “expenses, exclusive of the actual cost of constructing and financing improvements, that are directly related to the creation and implementation of the tax increment financing district.” 24 VSA Section 1891(6).

The advice we have received from White and Burke is one of the most essential elements of our program. Whether we pay this is a brokerage fee or an hourly rate is immaterial to the nature and function of the expense. It is hard to imagine an expense that is *more* directly related to the creation and implementation of the district than a brokerage fee paid upon completion of our largest source of increment. The City asks VEPC to concur.

### **Repayment of Funds Advanced Using Increment**

A common challenge in TIF districts is how to address the revenue shortfall in the first few years after the public improvements have been made but before the private investments have completed. Because the public improvements, by design, incent the private investment, TIFs are inherently back loaded. St. Albans chose to borrow a little more money than was needed for just improvements and use those funds to service the debt in the first five years. We called those funds a *working capital reserve* because they were intended to flow out in the first years of the TIF and be replenished (flow in) in the subsequent years. The working capital reserve was approved by our bond counsel, was featured prominently in our public information sessions, and was approved through the underwriting process with the Vermont Municipal Bond Bank.

At the February 2019 VEPC meeting, VEPC approved our use of the working capital reserve and applied a condition that they be replenished by continuing at 100 percent of municipal increment. Since that meeting it has been asserted that funds advanced on behalf of a TIF cannot be replenished by the TIF in successive years if the TIF is able to. This assertion turns the TIF program on its head.

TIFs have always been analyzed over the life of the district – the 20-year retention period. Indeed, the viability analysis that was performed in our initial application and was recently affirmed during the February approval, all use the retention period as the basis for the analysis. The assertion that funds advanced on behalf of a TIF cannot be repaid using increment converts the TIF program from a 20-year program to a year-by-year program. This is a 180 degree turn from the way TIFs have been always been administered by VEPC and understood by municipal attorneys.

Advocates of this position point to the language in 24 VSA 1894(i), which states that if the tax increment is insufficient to pay the principal and interest, in any year, the municipality remains liable for the full payment of the principal and interest for the term of indebtedness. This has always been interpreted through the lens of a 20-year program and to mean that the annual debt requirements never fell back on the education fund. Municipalities willingly accepted this condition as it reflected the inherent back loading of

TIF districts. Municipalities are willing to accept the risk because they are utilizing a long-term strategy to expand the tax base for the community. It is unlikely municipalities would be willing to front the money if it couldn't be repaid over time through increment.

Finally, it should be noted that at the time of St. Albans advancement of funds on behalf of the TIF, communities only had five years to issue all the debt for the TIF. It has since been expanded to ten. The five-year period created tremendous pressure to hit the ground running and advance the cash that was necessary to make the projects happen, lest the community waste the incredible opportunity offered by a TIF. This aligns well with the understanding and advice communities received that they had to front the funds, but they could be replenished if the TIF was successful.

For all the foregoing reasons, St. Albans asks VEPC to maintain the line of thinking that began at the February VEPC meeting and approve our intent to use increment to repay the working capital reserve fund.

### **Validation of Procedural Requirements**

During the information hearings for the September 2013 bond vote, the City reviewed extensive charts and spreadsheets explaining how we would repay the bonds. These spreadsheets all featured 20-year amortization schedules and demonstrated how the working capital reserve fund decreased and then increased over the life of the district. The hearings were supplemented with newspaper columns by the City Manager and frequently asked questions materials explaining how the TIF worked and how we would service the debts if one of the private projects didn't materialize.

The question has arisen whether St. Albans adequately explained that this was a 20-year commitment. In the attached resolution, the St. Albans City Council used their statutory authority to validate any procedural irregularities related to the call, notice, and conduct of the vote. The City now asks VEPC to concur and put to rest any question about whether St. Albans voters knew what they were voting on.

### **Conclusion**

In 2012, the State of Vermont granted St. Albans the most powerful tool in the state for full scale community revitalization, a Tax Increment Finance District. The City took this responsibility seriously and was determined to capitalize on a generational opportunity. We secured the requisite professional advice; we placed our personal reputations and integrity on the line; and we followed the rules as they were understood and practiced at the time.

We therefore ask VEPC to accept St. Albans' explanations for the questions asked and allow us to proceed.

Sincerely,



Dominic Cloud  
City Manager

City of St. Albans  
City Council Resolution

Re: Application for Substantial Change & Validation of Previous Notice Requirements

WHEREAS, the City of St. Albans (“City”), at an annual or special meeting thereof, approved the making of certain infrastructure improvements within the City’s Downtown Tax Increment Financing District (“District”), and authorized the issuance of general obligation bonds to finance the cost of such improvements; and

WHEREAS, the City’s District plan of finance was originally approved by the Vermont Economic Progress Council (“VEPC”) in August of 2012 and amended in February of 2019;

WHEREAS, the City has issued and sold its authorized bonds and has expended the proceeds thereof to pay the costs of making such District improvements; and

WHEREAS, the City has proceeded with due diligence and has completed said District improvements, and has placed the same into service; and

WHEREAS, in anticipation of receipt of District tax increment revenue, the City designated a portion of its bond proceeds as a working capital fund to pay District development costs and to reimburse other City funds for development cost advances made by the City pursuant to duly adopted Declarations of Official Intent; and

WHEREAS, the use of a working capital fund was disclosed in a transparent manner to the voters of the City and the Vermont Municipal Bond Bank; and

WHEREAS, the City has expended a portion of its bond proceeds to make *improvements*<sup>1</sup> to properties within the District upon which a hotel has been constructed and to pay brokerage fees as a *related cost*<sup>2</sup>; and

WHEREAS, these improvements were originally approved by VEPC as part of the Core Brownfield Project; and

WHEREAS, the following questions have arisen: 1) whether improvements to the hotel site are a TIF eligible expenses; 2) whether brokerage fees are a TIF eligible related cost; 3) whether working capital funds can be used in a TIF District and if they can be serviced using increment; and 4) whether St. Albans placed sufficient emphasis on the term of the TIF bonds in the informational sessions for the September 2013 bond vote; and

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<sup>1</sup> Vermont TIF Statutes define an improvement as “the installation, new construction, or reconstruction of infrastructure that will serve a public purpose and fulfill the public purpose of tax increment financing districts ... including utilities, transportation, public facilities and amenities, land and property acquisition and demolition, and site preparation.” 24 VSA Section 1891(4).

<sup>2</sup> Vermont TIF Statutes define related costs as expenses, “exclusive of the actual cost of constructing and financing improvements, that are directly related to the creation and implementation of the tax increment financing district.” 24 VSA Section 1891(6).

WHEREAS, VEPC approved St. Albans' financial plan and the costs of improvements to date through the substantial change process of February 29, 2019; and

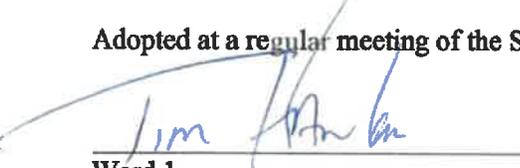
WHEREAS, St. Albans agreed to continue using 100 percent of municipal increment to replenish the working capital fund more quickly; and

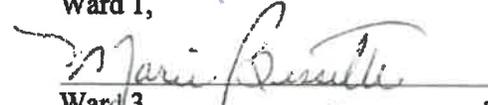
WHEREAS, St. Albans seeks to address the questions raised in a timely manner through the substantial change process.

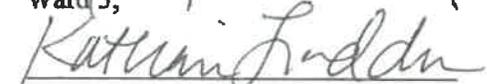
NOW, THEREFORE, BE IT RESOLVED THAT:

- (1) The City Council hereby validates all procedural requirements relating to the call, notice, and conduct of the City's September 2013 bond vote;
- (2) The City Council requests VEPC affirm the use of TIF proceeds to complete the site improvements and brownfield remediation necessary for the hotel;
- (3) The City Council requests VEPC affirm the payment of brokerage fees as a related cost;
- (4) The City Council requests VEPC affirm the ability to use increment to repay funds previously advanced on behalf of the district unless the district is unable to do so, in which case, they shall be the responsibility of the City general fund; and
- (5) The City Council requests VEPC affirm the City Council's validation of the bond vote procedural requirements.
- (6) This Resolution shall take effect upon adoption.

Adopted at a regular meeting of the St. Albans City Council held on the 1<sup>st</sup> day of April, 2019.

  
Ward 1,

  
Ward 3,

  
Ward 5,

Ward 2,

  
Ward 4,

  
Ward 6,

  
Tim Smith, Mayor