Joint Review Board (JRB) Meeting
Proposed Ludwig Drive TIF
Fairview Heights, Illinois
Monday, June 6, 2016
(Continuation of May 11, 2016 JRB Meeting)
9:15 a.m.
Meeting Room A, City Hall
10025 Bunkum Road

AGENDA

1. CALL TO ORDER (RECONVENE)
2. CITIZENS' COMMENTS
3. INTRODUCTION OF MEMBERS PRESENT
4. APPROVAL OF MINUTES OF MAY 11, 2016 JRB
5. NOMINATE AND ELECT PUBLIC MEMBER OF JOINT REVIEW BOARD
5. CONSIDER APPROVAL OF ALL TAXING DISTRICTS ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF FAIRVIEW HEIGHTS UTILIZING THE SURPLUS METHOD WITH DISTRIBUTION OF THE INCREMENT AT 33 1/3%
6. ADJOURN

MINUTES
JOINT REVIEW BOARD
PROPOSED LUDWIG DRIVE TIF

Wednesday, May 11, 2016
Meeting Room A, City Hall
11:00 a.m.

1. CALL TO ORDER

Economic Development Director Mike Malloy called the meeting to order at 9:30 a.m., with City Clerk Karen Kaufhold, Gene Norber of Economic Development Resources, Anne Markezich of St. Clair County, Todd Flemming of Caseyville Township, Mark Eichenlaub of Southwestern Illinois College, City Attorney Representative Jim Gehrs, Bryan Doyle of Fairview Caseyville Township Fire Department, Julie Brown of Pontiac William Holliday District 105, Brian Mentzer Belleville School District 201, Bruce Canty of Caseyville Township, Sharon Shajack of Fairview Heights, and Administration Department Executive Secretary Becky Short in attendance.

2. CITIZENS' COMMENTS

Malloy opened the floor for Citizens' Comments at this time. No comments.

3. INTRODUCTION OF MEMBERS PRESENT

Malloy introduced all members present.

4. NOMINATIONS AND ELECTION OF PUBLIC MEMBER TO JOINT REVIEW BOARD

Charles Kassly, who was recommended, was unable to attend the meeting.

5. NOMINATE AND ELECT CHAIRMAN OF THE BOARD

Norber introduced requirement to nominate and elect a Chairman. Bryan Doyle made a motion to nominate Mike Malloy as Chairman, Bruce Canty seconded.

Vote: 7 YEAS (Markezich; Fleming; Eichenlaub; Doyle; Brown; Mentzer; Canty) 0 NAYS

Director Malloy appointed as Chairman of the Joint Review Board.

6. JOINT REVIEW BOARD RESPONSIBILITIES

Norber reviewed Statute 65 ILCS 5/11-74.4-5 [b][i] and the responsibilities of the Board. Reviewed the Board's responsibility under the TIF Act to review the public record, planned documents and proposed ordinances approving the redevelopment plan and project. The board is asked to review all documents and make a recommendation. All Certified Mail receipts were returned indicating all Taxing Districts invited received materials relating to the meeting.

7. PRESENTATION OF TIF REDEVELOPMENT PLAN

Norber reviewed the Proposed Ludwig Drive TIF at this time.

The proposed Ludwig Drive TIF is a 27 ½ acre area. They have reviewed the qualifications of this area. Two methods to finding if the area qualifies to be a TIF area are either the area is conservation or the area is blighted. This area is blighted. There are nine blighting factors according to the act. They are deterioration, structures below minimum code, excessive vacancies, inadequate utilities, excessive land coverage, lack of community planning, and lack of growth in the EAV. The funds will assist with deteriorated buildings, vacant properties, and site improvements. This area is entirely for commercial use. There are 2 parcels in the boundary that have development potential.

Joe's Crab Shack is not included in the boundary because the city has been reviewing the area for months and some of the factors have changed. Joe's Crab Shack is not in the boundary because there has been a noticeable renovation to the building. It was renovated during this process. Compared to last year, it is in a better physical condition and the value of the building has gone up.

8. DISCUSSION

Sharon Shajack asked if she could see a list of what was fixed at Joe's Crab Shack. Malloy said he would get the information for her.

9. RECOMMENDATION TO APPROVE OR DISAPPROVE REDEVELOPMENT PLAN AND THE DESIGNATION OF THE REDEVELOPMENT PROJECT AREA ON THE BASIS OF THE REDEVELOPMENT PROJECT AREA AND REDEVELOPMENT PLAN SATISFYING THE PLAN REQUIREMENTS, THE ELGIBILITY CRITERIA AND OBJECTIVES OF THE TIF ACT

Brian Mentzer made a motion to recommend the approval of the State Route 159 North TIF Redevelopment Plan and the designation of the Redevelopment Project Area to the City Council subject to and on the condition the city enters into an intergovernmental agreement with the other taxing districts with terms as previously discussed and with such other terms that are mutually agreed by all parties, Bryan Doyle seconded.

7 YEAS (Markezich; Fleming; Eichenlaub; Doyle; Brown; Mentzer; Canty) 0 NAYS

10. CONSIDER APPROVAL OF ALL TAXING DISTRICTS ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF FAIRVIEW HEIGHTS UTILIZING THE SURPLUS METHOD WITH DISTRIBUTION OF THE INCREMENT AT 33 1/3%

Mark Eichenlaub made a motion to table item 10, seconded by Julie Brown.

7 YEAS (Markezich; Fleming; Eichenlaub; Doyle; Brown; Mentzer; Canty) 0 NAYS

11. ADJOURN

Julie Brown made a motion to adjourn, seconded by Brian Mentzer. Motion carried by voice vote and was unanimous. Meeting adjourned at 11:22 a.m.

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INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF FAIRVIEW HEIGHTS, ILLINOIS
AND
TAXING DISTRICTS OF THE LUDWIG DRIVE TAX INCREMENT FINANCING REDEVELOPMENT PROJECT AREA

This Intergovernmental Agreement (the "Agreement") is entered into on _____, 2016, between the City of Fairview Heights, a Municipal Corporation (the "City"), and _____ (the "Taxing District").

WHEREAS, pursuant to the Illinois Tax Increment Allocation Redevelopment Act (65 ILCS 11-74.4-1 et seq., the "Act") the Council of the City adopted Ordinance _____-2016 approving the Ludwig Drive Tax Increment Financing Redevelopment Plan (the "Redevelopment Plan"), Ordinance _____-2016 designating the Ludwig Drive Tax Increment Redevelopment Area (the "TIF Area"), and Ordinance _____-2016 adopting real estate tax increment financing with respect to the Redevelopment Plan for the TIF Area (collectively, the "Ordinances"); and

WHEREAS, the purpose of the Redevelopment Plan is to encourage private development in the City, and enhance the tax base of the taxing districts within the TIF Area; and

WHEREAS, a portion of the Taxing District's territory is located within the boundaries of the TIF Area; and

WHEREAS, pursuant to Section 11-74.4-7 of the Act, the City may, annually, take actions to have certain money's in the TIF Area's special tax allocation fund (the "Special Fund") deemed as "Surplus Funds"; and

WHEREAS, pursuant to the Section 11-74.4-7 of the Act, all such "Surplus Funds" in the Special Fund shall be distributed annually within 180 days after the close of the City's fiscal year by being paid by the City Treasurer to the St. Clair County Collector (or the County office identified by the County to receive such payment), and the St. Clair County Collector (or the County office identified by the County to make such distribution) shall thereafter make distribution to the respective taxing districts, in the same manner and proportion as the most recent distribution by the appropriate County office to the respective districts, of real property taxes from real property in the TIF Area; and

WHEREAS, the City and other taxing districts are authorized and empowered by Article VII, Section 10 of the Constitution of the State of Illinois (1970) and 5 ILCS 220/1, *et seq.*, to enter into intergovernmental agreements for any purpose not prohibited by law; and

WHEREAS, pursuant to Section 11-74.4-4 of the Act, the City is authorized to enter into all contracts necessary or incidental to the implementation and furtherance of the Redevelopment Plan; and

WHEREAS, the continued provision of quality services by the Taxing District is important to the City and the public welfare of its citizens and is critical in furthering economic development in the City.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the City and the Taxing District do hereby agree as follows:

SECTION I

1.1 The above recitals are hereby incorporated into this Agreement as if fully set forth in this paragraph 1.1.

SECTION II

2.1 This Agreement shall become binding upon the City and the Taxing District upon approval of this Agreement by the City Council and the governing body of the Taxing District and the execution of this Agreement by each of their respective duly authorized agents.

2.2 This Agreement shall expire upon the earlier of the following: (a) December 31 of the year in which the payment to the City treasurer, as provided in Section 11-74.4-8 (b) of the Act, is to be made with respect to ad valorem taxes levied in the 23rd calendar year after the year in which the Ordinances were adopted; (b) any action by the City to terminate the tax increment allocation financing for the TIF Area; (c) by mutual agreement of the City and the Taxing District; and (d) any decree or judgment invalidating the ordinances listed in the preamble; provided, however, that the obligation of the City to make an annual payment which is due and owing to the Taxing District at the time of such expiration or termination shall survive such expiration or termination of this Agreement.

SECTION III
Duties of the City

3.1 Commencing with tax year 2016 payable in calendar year 2017, the City hereby pledges and agrees to declare 33.3% of the incremental property tax revenues generated each year within the TIF Area and deposited in the Special Fund to be "Surplus Funds," and to take all actions required by Section 11-74.4-7 of the Act to declare such Surplus Funds. The remaining 66.7% of the incremental property tax revenues generated each year within the TIF Area will remain in the Special Fund for allocation by the City as it deems appropriate pursuant to the provisions of the Redevelopment Plan and the Act.

3.2 The Surplus Funds shall be distributed annually within 180 days after the close of the City's fiscal year by being paid to the St. Clair County Collector (or the County office identified by the County), as directed by Section 11-74.4-7 of the Act. The County Collector shall thereafter make distribution to the taxing districts which have taxable property within the TIF Area for the tax year for which such distribution is being made , in the same manner and proportion as the most recent distribution by the County Collector to the affected taxing districts of real property taxes from real property in the TIF Area.

SECTION IV
Duties of the Taxing District

4.1 In consideration of the City's duties set forth in Section III hereof, the Taxing District hereby agrees to waive its right to any other amounts from the Special Fund, including but not limited to "capital costs" and other redevelopment project costs as defined in the Act. The Taxing District shall reimburse the Special Fund if there is a judicial determination that the "Surplus Funds" were paid to the Taxing District incorrectly, or in error. The amount to be reimbursed will be equal to the amount of the payment judicially determined to have been paid incorrectly or in error. The reimbursement shall be made by the Taxing District within thirty (30) days of any such court order or judgment becoming final. Nothing within this Section shall require the Taxing District to reimburse any money it receives from the Special Fund that is not the subject of a judicial order or judgment.

SECTION V
Indemnity

5.1 The City covenants and agrees to defend, indemnify and hold the Taxing District and the Taxing District's officers, board members, attorneys, agents, employees and representatives harmless from all costs and expenses (including expert witness and attorneys' fees, and costs of investigations) of defending any claims or actions contesting the validity or legality of the Redevelopment Plan, the TIF Area, the adoption of tax increment financing with respect to the Redevelopment Plan for the TIF Area, or this Agreement.

SECTION VI
Defaults and Remedies

6.1 Neither the City nor the Taxing District shall be considered to be in breach of its obligations with respect to any delay in the performance of any duty or responsibility under this Agreement in the event that the delay in such performance is due to either: (a) the performance of any governmental agency or body not a party to this Agreement whose performance is necessary to the performance of any duty or responsibility of either the City or the Taxing District under this Agreement; or (b) unforeseen causes beyond the control and without such party's fault or negligence including, but not limited to, acts of God, acts of a public enemy, fires, floods, epidemics or other similar causes that disrupt the operations of the City and/or District. The time for performance of any duty or responsibility under this Agreement delayed as a result of any of the foregoing shall be extended for the period that the condition exists.

6.2 In the event of any default in or breach of any term or condition of this Agreement by either party, the defaulting or breaching party shall, upon written notice from the other party, proceed immediately to cure or remedy such default or breach, and shall, in any event, within 30 days after receipt of such notice, commence to cure or remedy such default. If such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such legal proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the defaulting or breaching party. Any legal action concerning this Agreement shall be brought in the Circuit Court for St. Clair County, Illinois. In any such legal proceedings, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and litigation costs.

SECTION VII
Miscellaneous Provisions

7.1 Entire Agreement. This Agreement contains the entire agreement between the City and the Taxing District regarding the City's declaring of certain moneys in the Special Fund as "Surplus Funds," and the distribution of such funds to the St. Clair County Collector (or the County office identified by the County to receive such payment); this Agreement supersedes all prior agreements, negotiations and discussions with respect thereto (if any), and shall not be modified, amended or changed in any manner whatsoever except by written agreement of the City and the Taxing District, where such agreement is duly approved by the City Council and the Taxing District's Board, except that no approval by the City Council or the Taxing District Board is required for any written agreement by the City and the Taxing District to modify the time of performance of any duty or responsibility under this Agreement.

7.2 Assignability and Transfer. The duties and responsibilities of the City and the Taxing District under this Agreement are not assignable or transferable.

7.3 Limited Obligation. The obligations of the City under this Agreement shall never constitute an indebtedness or a general obligation of the City within the meaning of the 1970 Constitution of the State of Illinois or any statutory provisions, and shall not give rise to any charge or lien against the City's general credit or taxing power.

7.4 Notices. Any notices to be served pursuant hereto shall be deemed properly delivered if delivered in writing by Federal Express or a comparable "over-night" courier service (which shall be deemed dated on the date of delivery thereof), or served by United States Postal Service, certified or registered mall, postage prepaid (which shall be deemed received on the third business day following the postmarked date thereof). Notices are to be directed to:

For the City:

Hon. Mark Kupsky (or then serving Mayor)
10025 Bunkum Road
Fairview Heights, Illinois 62208

Mr. Kevin Hoerner (or then serving City Attorney)
Becker, Hoerner, Thompson & Ysursa PC
5111 W. Main Street
Belleville, Illinois 62220

For the Taxing District:

_____
_____
_____
_____

_____
_____
_____
_____

7.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

7.6 Counterparts. Any number of counterparts of this Agreement may be signed on behalf of the City and the Taxing District, which counterparts, when fully executed shall constitute but one and the same agreement.

7.7 Number of Pages. This Agreement consists of seven (7) pages, including any signature pages.

7.8 Severability. In the event that any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

SECTION VIII
Representations and Warranties

8.1 The City represents and warrants that it has full constitutional, statutory and lawful right, power and authority, under current applicable law, to execute, deliver and perform the terms, duties and responsibilities of this Agreement and all of the foregoing has been duly and validly authorized by all necessary City proceedings and procedures and that this Agreement constitutes a legal, valid and binding Agreement.

8.2 The Taxing District represents and warrants that it has full constitutional, statutory and lawful right, power and authority, under current applicable law, to execute, deliver and perform the terms, duties and responsibilities of this Agreement and all of the foregoing has been duly and validly authorized by all necessary Taxing District proceedings and procedures and that this Agreement constitutes a legal, valid and binding Agreement.

SECTION IX
Covenant Not to Sue

9.1 The Taxing District does hereby covenant to not take any direct or indirect action, whether through litigation or other means, to object to , contest, or attempt to invalidate any action or proceeding pertaining to the Redevelopment Plan, Redevelopment Project, or TIF Area, and shall forever refrain and desist from instituting or asserting against the City, its successors, elected officials, officers, employees, agents, representatives and attorneys, any and all claims, demands, obligations or causes of action relating to, concerning or arising out of any of the following: (a) the designation of the TIF Area; (b) the adoption and implementation of the Redevelopment Plan; and (c) the adoption and implementation of tax increment financing in the TIF Area; provided, however, that this provision shall not be binding on the Taxing District if:

1) The City shall be in default under any term or condition of this Agreement and fails to cure same within the applicable cure period, in which case the Taxing District may institute legal proceedings pursuant to Section 6.2 hereof; or

2) This Agreement should be determined to be unlawful or unenforceable against the City by the final order of a court of law having jurisdiction of the parties.

SECTION X
Mutual Assistance

10.1 The parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications supplemental hereto as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

IN WITNESS WHEREOF, the City and the Taxing District have caused their respective corporate names to be subscribed hereto by their respective undersigned authorized officers and caused their respective corporate seals to be affixed hereto, and attested, all on and as of the date first above written.

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THE CITY OF FAIRVIEW HEIGHTS, ILLINOIS

By:_____
Mayor

ATTEST_____

TAXING DISTRICT

By:_____
_____

ATTEST_____