

REGULAR MEETING DES MOINES TRANSPORTATION BENEFIT DISTRICT

MINUTES

February 12, 2009

The regular meeting of the Transportation Benefit District Board was called to order at 6:32 p.m. by Chair Kaplan, in the Council Chambers, 21630 11th Avenue South, #B.

ROLL CALL - Present: Chair Dave Kaplan, Boardmembers Ed Pina, Bob Sheckler, Dan Sherman, Scott Thomasson and Susan White. Absent: Vice Chair Carmen Scott (excused later in the meeting). Also in attendance were Executive Director Tony Piasecki, Assistant City Attorney Susan Mahoney, Associate Transportation Engineer Brandon Carver and City Clerk Denis Staab.

APPROVAL OF MINUTES

MOTION was made by Boardmember Pina, seconded by Boardmember Thomasson and passed unanimously, to approve the minutes of January 15, 2009.

OLD BUSINESS

Update from DOL Discussions

Associate Transportation Engineer Carver reported listening in on a conference call with the Dept. of Licensing and it appears it will work for them to administer the fee using the Dept. of Revenue's Sale Tax Code that fits the City's boundary. He highlighted key points as follows:

- Each Transportation Benefit District Board will be asked to sign a contract with DOL for the collection of the fees.
- Each Benefit District will be responsible for updating their information with the Dept. of Revenue quarterly.
- Each Benefit District will be responsible to process and issue any refunds that may be due resulting from any questionable taxation. It is DOL's job to bill the fee but if there is a questionable taxation based on address, or an exempt vehicle, it will be up to the District's to issue the refund.
- Each Benefit District must be the point of contact for citizens who have questions about the tax. A message will be printed on the renewal notice that is specific to each District, providing a phone number to call.

He informed the Board that DOL is estimating the cost to be about \$70,000 to use the Dept. of Revenue's information to update their information, which cost they will absorb. However, they are asking each Benefit District to pay \$1,000, one time only charge, for the printing change. There also is a 1% cap on Administrative charges that they will take off the top of the taxes collected. The taxes collected will be sent to the office of the State Treasurer where they will be certified and then the Board will receive a monthly check. He informed the Board that DOL is still looking at September 2009 as the first renewal that will have the additional fee.

Chair Kaplan questioned whether DOL acknowledged receipt of the Executive Director's letter. Associate Transportation Engineer Carver responded they did not.

It was determined that the City Attorney should follow up with the Attorney General's office and staff should follow up with DOL to request acknowledgement of letter advising that Des Moines expects to receive revenues beginning in July 2009.

Chair Kaplan noted if the Board needs to pay the \$1,000, but has not collected any fees yet, he questioned where are the funds to pay going to come from.

Executive Director Piasecki noted the City could lend the funds, however staff does not see where DOL has the authority to assess any fees other than the 1% Administrative cost. He suggested we confirm with other cities that they agree and together tell DOL we are not paying the \$1,000.

Chair Kaplan asked if the Board will need to approve their own expenditures and Executive Director Piasecki replied that he believes so. Chair Kaplan then questioned whether this will require the Board's own checks. Executive Director Piasecki noted this will be covered more in the next agenda item, but noted the Board will definitely have their own account.

NEW BUSINESS

Inter-local Agreement Between the TBD and the City.

The Board proceeded to review the Draft Interlocal with the following comments:

Article I Termination:

Automatic one year renewal, unless it is terminated - Consensus

Article II, 4th paragraph:

Boardmember Sherman felt there should be no charge from the City as the Board is providing funds to the City for projects.

Assistant City Attorney Mahoney advised that not paying would be considered an unauthorized gift of public funds. So there has to be an accounting and billing.

Chair Kaplan expressed the concern that if equal obligations are made relative to contributions, then he would object. He sees the costs as being marginal and not large.

Executive Director Piasecki suggested arriving at a billable rate for the direct work that City employees will be doing, and that would include an overhead rate that includes his time, City Attorney's time, vehicle and computer replacement costs, etc.

Boardmember Thomasson noted the agreement is structured so that the District is giving the City \$420,000 and the City is giving back limited services, he questioned how that would be a gifting of public funds? This is similar to staff time to support activities at the Marina or the Farmer's Market.

Executive Director Piasecki advised he will have the City Attorney provide a more formal legal opinion, keeping in mind member Thomasson's statement. He also noted he will check on how other cities are handling the issue.

Article III Liability

Executive Director Piasecki reported staff will approach WCIA asking them to provide liability insurance for the District for things that the District might do or decisions the Board makes. He stated we do not want any claims held against the City, this would also include individual Boardmembers. He confirmed the District meets the criteria to join WCIA, but cannot be named insured under the City of Des Moines, as the Board is a separate entity. He

noted the Board will be insured as a "class 5" for special districts and the minimum assessment is \$5,000 a year.

Chair Kaplan questioned whether the Transportation Benefit Districts could form a group and insure through WCIA in that manner, as a way to reduce costs to all the Districts. Executive Director Piasecki noted he will have to check on this and will report back. He also stated he will check on the \$5,000 fee to determine if that is appropriate.

Article II

Boardmember Sherman suggested just stating "that in exchange for the City being the sole beneficiary of these funds, they will provide administrative services." This would make it clear what the District is giving to the City and that we get something in exchange.

Chair Kaplan felt the problem is the Board tells the City which projects they have to spend the money on, therefore there are strings attached.

Article IV Reimbursement

Executive Director Piasecki explained the City will have to do the work as authorized by the District first and then bill the District for payment.

Boardmember Thomasson commented that he thought reimbursement would only pertain to administrative services as talked about in Article II, as opposed to being the way the District actually disburses the bulk of the money to the City. He felt if this agreement is the larger picture it needs to say a whole lot more in Article II and IV.

Executive Director Piasecki noted that Article II could contain a summary of the type of projects the City will be doing on behalf of the District. Also add a clause that says every year November/December for the following calendar year, the District shall detail out an agreement with the City saying these are the things you are going to do for us next year.

Consensus was it should be established that the District has approved a project list in advance, turn the revenues over once a year in conjunction with the Budget, authorize the transfer of revenues to cover the expenditures, and then it is a done deal. It should also state that the City is not authorized to do any additional work beyond what is authorized by the District. Executive Director Piasecki added that in addition at least quarterly City staff should be providing a written report to the District Board saying "here is how much money is coming in and whether it is above or below estimates, then if there is any corrective action that needs to be taken, the Board can meet to do that.

Boardmember Thomasson felt ideally we should go through the budget and pick those projects that qualify and match the funds available. He noted that should the Attorney say that the City needs to bill for Administrative Services that would be the only thing he sees that would be reimbursed, the rest is a disbursement from the Board to the City with an annual report that tells how the money was spent. This would be in lieu of the City sending the District a monthly billing.

Boardmember Thomasson also questioned whether the Board should establish a reserve amount that would be used for the insurance bill and other operating costs that might come up.

Executive Director Piasecki stated the comments made tonight will be incorporated into another draft agreement that will come back to the Board at its next meeting.

Excused Absence

MOTION was made by Boardmember Sherman, seconded and passed unanimously, to excuse Vice Chair Scott.

NEXT MEETING DATE

Chair Kaplan noted the next regular meeting will be March 12, 2009, at 6:30 p.m.

ADJOURNMENT

At 7:16 p.m. Chair Kaplan declared the meeting adjourned.

Respectfully submitted,

Denis Staab
Board Clerk