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Salt Lake City, Utah 84147-0753

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August 21, 2019

VIA EMAIL: c/o jo.walz@slcgov.com
Jackie Biskupski, Executive Director
Chris Wharton, Vice Chair of Board of
Directors

cc Via Email: Jackie Biskupski,
mayor@slcgov.com
Chris Wharton, District 3 council person,
chris.wharton@slcgov.com

**SALT LAKE CITY REDEVELOPMENT
AGENCY**

451 South State, Room 418
Salt Lake City, Utah 84111

VIA EMAIL: council.comments@slcgov.com

Salt Lake City Council
SALT LAKE CITY CORPORATION
451 South State Street, Room 326
Salt Lake City, Utah 84111

**Re: Redevelopment Agency (RDA) Hearing of August 20, 2019 - RDA Agenda Item (C)(3)
– NWQ, LLC Resolution Allowing Tax Increment Reimbursement**

Agency staff may have incorrectly testified as to the legal standard regarding the consideration of “public benefit” under the Community Reinvestment Act (CRA), U.C.A. § 17C-5-105(12) and under RDA Resolution No. 8-26-2018 dated August 8, 2018 titled “Northwest Quadrant Tax Increment Reimbursement Policy to Support the Implementation of the Northwest Quadrant Community Reinvestment Area Plan” (the “RDA NWQ Tax Reimbursement Policy”).

Sirs:

Addendum “A” is a partial digest of the RDA’s video of the RDA hearing held August 20, 2019 on the above-matter (hereafter the “RDA video”), an information gathering hearing concerning the NWQ, L.L.C. tax increment reimbursement resolution. At video block 2:56:55 to 2:58:45¹, I believe an agency staff member incorrectly testified to you regarding the legal standard for the consideration of “public benefit” under both the CRA and under the RDA NWQ Tax Reimbursement Policy. I am not an attorney, but I recommend that your review the points and authorities discussed below with your legal counsel at the City Attorneys’ Office. The RDA Board can make a better description with these matters clarified before its anticipated August 27 hearing.

¹ <https://youtu.be/ddhqU4ODp70?t=10609> .

The substance of the staff testimony was that when deciding to approve or to not approve the proposed NWQ Tax Increment Reimbursement Authorization Resolution for \$28 million (RDA Board Briefing Book at 82-87) that the Board was limited to considering a narrow set of criteria in RDA NWQ Tax Reimbursement Policy adopted August 2018. That policy does contain a list of narrow criteria in ¶¶ 2.3 and 2.4 that the involve only *direct area plan economic benefit* and that, as correctly testified by agency staff, focuses on whether it is likely that sufficient increases in property values will occur that will generate sufficient revenues to reimburse the developer.

Staff also testified (video at 2:53:15 to 2:56:55) that a pre-condition to considering a the tax increment reimbursement authorization was an economic analysis. That analysis is required by your policy at ¶ 3.2. In the instant case, the required economic analysis is the June 2019 economic benefit and analysis report by Lewis, Young, Robertson & Burningham, Inc. (“LYRB”). That analysis refers to the creation of 2,900 direct jobs and predicted 2.8 billion in future wages from the proposed Phase I development. In response to one board member’s question about the 2,900 jobs, a staff member testified, in summary, that although general economic benefit of the proposal is included in the report that such data was only for informational purposes, and that the agency is really only interested in whether projections of future property tax revenues will be sufficient to allow the RDA to pay the tax increment reimbursement to the developer in a timely manner.

Here, applicable law is reviewed beginning at the State level and working down to the RDA’s tax increment reimbursement policy. There is some ambiguity concerning what the term “public benefit” means and when it is applied. State law provides, in part, that,

Community reinvestment project area plan requirements. An agency shall ensure that each community reinvestment project area plan and proposed community reinvestment project area plan: (12) includes an analysis or description of the anticipated *public benefit resulting from project area development, including benefits to the community's economic activity and tax base*; . . . (Utah Code Ann. § 17C-5-105, *Community reinvestment project area plan requirements* (effective May 14, 2019) (emphasis added except as title)).

Under Utah Code Ann. § 17C-5-105(12) refers to two exclusive categories of “public benefit”. It refers to a CRA plan area’s impacts on the tax base. But “public benefit” also refers to the subcategory of general economic impacts on the broader community. In the statute, “public benefit” does not refer specifically either to just positive impacts or negative impacts, that is the statute does not specifically refer to whether “public benefit” means “net public benefit”. However, reading the statute as a whole, the remainder of this comment takes “public benefit” to refer to and to mean “net public benefit”. Combined with the sub-category of the express term “community’s economic activity”, the term “public benefit” as used in the statute refer to the broad range of quantifiable impacts on the community outside the CRA’s plan area, such as the economically estimable negative impact of increased air pollution that a CRA might generate.

The RDA’s NWQ Tax Increment Reimbursement Policy, which is attached hereto as Addendum “B”, provides at Paragraphs 2.3 and 2.4 (at 3-4) to a set of reimbursement criteria that are specific just to the boundaries of the NWQ community reinvestment plan area.

But the operation of Paragraphs 2.3 or 2.4 are contingent on the completion of the “Application Analysis” provided for in Paragraph 3.2(a), which states, in part:

3.2 Application Analysis. Applications that result in, if approved, a reimbursement agreement that reimburses one million dollars (\$1,000,000) or more of tax increment *shall complete the following steps* to be considered by the RDA. . . .

a. Third Party Financial Analysis

RDA staff shall consult with a third party financial analyst to provide a recommendation with *a supporting analysis on 1) the public benefit anticipated to be derived from the proposed project* and 3) [sic: 2] determination of financial need and whether or not the proposed project might reasonably occur through private investment without the Reimbursement. . . . The third party financial analysis shall be provided to the Board prior to the Board's consideration of the Reimbursement application. . . . (RDA's NWQ Tax Increment Reimbursement Policy, emphasis added, except as to paragraph title).

Paragraph 3.3 goes on to describe the Board's eventual approval or rejection of a tax increment resolution for a specific project:

3.3 Board Review and Approval Process

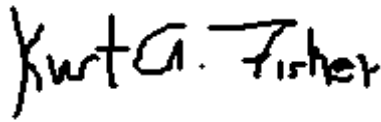
. . . The Board will use best efforts to consider the application within sixty (60) days of the Board's receipt of the application from RDA staff and to take action on the application as soon as reasonably practicable thereafter. The Board shall have the authority *to provide tax increment reimbursement approval or denial*. Any approval, and the terms of the tax increment reimbursement, shall be made by resolution (*id*, emphasis added).

Like Utah's CRA statute, the RDA NWQ Tax Reimbursement Policy does not define the term “public benefit”. A plain and reasonable reading of the CRA statute and the RDA's August 2018 policy is that prior to approval a tax increment reimbursement resolution the Board may consider net public benefit that the project may have on the community's broader economic activity. It makes sense that for projects over \$1 million dollars, impacts might extend past a CRA plan area's boundaries, and that they should be considered. The many concerns that the community raised during the August 20, 2019 hearing regarding the costs and benefits of NWQ's proposal appear to be within the Board's discretion to deliberate on before reaching a decision on the proposed resolution.

How these provisions of the CRA statute and the RDA NWQ Tax Reimbursement Policy relate to the Master Development Agreement between Salt Lake City Corporation, the RDA, and NWQ, L.L.C. dated January 31, 2018 (Briefing Book at 43-62) is something that it is not appropriate for me as a non-attorney to comment on. Again, I recommend that the RDA Board consult with the City Attorney on that issue.

In conclusion, at the August 20, 2019 hearing, RDA staff may have mischaracterized the role of the Board considering “public benefit” before the Board decides to finally approve or deny the proposed NWQ Tax Increment Reimbursement Resolution. Again, I am a concerned citizen and not an attorney. However, a plain reading of the applicable statute and policy – something within the capability of any ordinary college educated Salt Lake City resident - indicates something contrary to what the staff told the Board on August 20. I encourage the Board to consult with the City Attorney on these concerns prior to completing its deliberations. Properly advised by legal counsel as to its duties under applicable law, the Board can then make the best decision in the public's interest.

Please feel free to contact me with any questions that you may have.

A handwritten signature in black ink that reads "Kurt A. Fisher". The signature is written in a cursive, slightly slanted style.

Very Truly Yours,

Kurt A. Fisher

Statutes and Other Laws

Utah Code Ann. § 17C-5-105, *Community reinvestment project area plan requirements* (effective May 14, 2019) <https://le.utah.gov/xcode/Title17C/Chapter5/17C-5-S105.html>

References

Lewis, Young, Robertson & Burningham, Inc. June 2019. Northwest Quadrant Infrastructure Benefits Analysis: The Redevelopment Agency of Salt Lake City. (Briefing Book, folio page 88).

Master Development Agreement between Salt Lake City Corporation, the RDA, and NWQ, LLC. dated January 31, 2018 (Briefing Book at 43-62).

Salt Lake City Redevelopment Agency. August 21, 2018. RDA Resolution No. 8-26-2018 dated August 8, 2018 titled “Northwest Quadrant Tax Increment Reimbursement Policy to Support the Implementation of the Northwest Quadrant Community Reinvestment Area Plan”.

Salt Lake City Redevelopment Agency. August 2019. Briefing Book for Board Members. (171 pages) (the “Briefing Book”). File: Meeting Materials_20190815203642946.pdf Available at <https://www.slc.gov/council/agendas/>.

Salt Lake City Redevelopment Agency. August 20, 2019. Video of Formal Meeting held August 20, 2019 (4 hours, 20 mins). YouTube. <https://youtu.be/ddhqU4ODp70>

Addendum A

Partial Digest of Video of Formal RDA Meeting held August 20, 2019

At 2:56:55 to 2:58:45. Staff member testifies that general public benefit, e.g. - predicted jobs - is not required to be considered by the NWQ Tax Reimbursement Policy.

<https://youtu.be/ddhqU4ODp70?t=10609>

A third staff member, a budget analyst, stated that although jobs are important, from a city perspective "the only things that really matters is whether the city can get it paid back from a property tax perspective. The City does not participate in income tax and so the analysis is interesting in terms of what that effect on the economy might be and it can inform your inform your guys policy making as it relates to affordable housing and things like that but in terms of does the analysis show that there will be an enough property tax increment generated to pay - to reimburse the developer for these appropriate costs that is separate from income tax because the city does not participate in it [income tax, ending at 2:57:37]." Wharton repeats his question about larger public benefit in terms of good jobs. The staffer then states "I think that that is a separate question that is something that is not necessarily covered in the RDA tax increment reimbursement policy, but the Board could certainly add that to the policy. It is not something that the Board said at the outset 'this is a standard that any investment must meet'. You just haven't gotten into the details of business and what they pay." [Ending at 2:58:45].

At 2:53:15 to 2:56:55: Staff member responds to Councilperson Wharton's question that general public benefit in terms of jobs is provided only for informational purposes. States the Phase I is "spec warehouse space". <https://youtu.be/ddhqU4ODp70?t=10392>

Councilperson Wharton asks a general public benefit question: Will the proposal pay wage that will enable a Salt Lake City to work there and rent a \$1,000 per month apartment? Wharton points specifically to a slide representation that 2,900 jobs will be created. The staff member answers that the agency has provided a public benefit analysis. The staff member states that the analysis is really just to determine whether the tax increment monies will be repaid. The staff member states again that "this is spec warehouse space" (2:54:45). Although other information about general benefit is provided like jobs and wages, but the agency is mostly focused on whether increment would be repaid (ending at 2:56:13). A second staffer noted that a Lewis-Young staffer was present to speak, if the Board so desired; that the agency has seen a confidential list of potential tenants that were in light-manufacturing, and that public comments go to whether Phase 1 will go to light manufacturing instead of warehouse and the wages for each. [Ending at 2:56:55.]

Addendum “B”

**RDA Resolution No. 8-26-2018 dated August 8, 2018 titled
“Northwest Quadrant Tax Increment Reimbursement Policy
to Support the Implementation of the Northwest Quadrant
Community Reinvestment Area Plan”**

REDEVELOPMENT AGENCY OF SALT LAKE CITY

RESOLUTION NO. R-26-2018

**Northwest Quadrant Tax Increment Reimbursement Policy to Support the Implementation
of the Northwest Quadrant Community Reinvestment Area Plan**

RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY
OF SALT LAKE CITY ADOPTING A NORTHWEST QUADRANT TAX INCREMENT
REIMBURSEMENT PROGRAM POLICY

WHEREAS, the Redevelopment Agency of Salt Lake City (“RDA”) was created to transact the business and exercise the powers provided for in the Utah Community Reinvestment Agency Act.

WHEREAS, the Board of Directors of the Redevelopment Agency of Salt Lake City (the “RDA”) has approved the Northwest Quadrant Community Reinvestment Area (“Project Area”) to facilitate the capture of tax increment within the boundaries of the Project Area which is further depicted in **Exhibit A**.

WHEREAS, tax increment is intended to further the purposes of the Northwest Quadrant Community Reinvestment Area Plan (“Project Area Plan”) to carry out economic development and implementation of the Northwest Quadrant Master Plan.

WHEREAS, the Utah Community Reinvestment Agency Act grants the RDA authority to enter into participation agreements (also known as tax increment reimbursement agreements), for the purpose of providing incentives in the form of tax increment to implement the Project Area Plan.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY THAT THEY hereby approve the following tax increment reimbursement policy for the Project Area:

1. GENERAL

1.1 Purpose

The Northwest Quadrant Tax Increment Reimbursement Program (“Program”) provides tax increment reimbursements (“Reimbursements”) for projects that further the purposes of the Project Area Plan. Reimbursements shall allocate a portion of new tax growth generated by a development that delivers substantial and measurable change within the Project Area. Participants shall be entitled to a Reimbursement only after executing a Participation and Reimbursement Agreement (“Agreement”) with the RDA, as well as fully funding the capital costs to improve the property and generating sufficient tax increment.

1.2 Eligible Projects

To be eligible for a Reimbursement, projects shall:

- a. Be located within the Developable Area and/or Development Buffer as depicted in **Exhibit A**;
- b. Align with the Project Area Plan;
- c. Provide sufficient evidence that tax increment funding is necessary for the project to succeed and to verify that the request is reasonable; and
- d. Involve significant private investment of capital improvements so as to assure adequate yield of tax increment.

1.3 Improvement Categories

Eligible improvements shall be categorized as either project-specific improvements or system-wide improvements, as follows:

- a. **Project-Specific Improvements**
Tax increment reimbursements may facilitate project-specific improvements (“Project Improvements”) that benefit a single parcel or parcel assemblage. Project owners/developers will receive a portion of the new, additional taxes generated by the Project Improvements over a limited period of time.
- b. **System-Wide Improvements**
Tax increment reimbursements may facilitate system-wide improvements (“System Improvements”) that benefit more than one parcel and property owner. A portion of the new, additional taxes generated by development that has been facilitated by the System Improvements may be paid toward the cost of System Improvements on a pro-rata basis. Applications for reimbursement for System Improvements will be given priority based on the date the application is made, and the RDA will commit tax increment based on priority of the application.

1.4 Design Requirements

Projects approved for tax increment reimbursement must consider the RDA’s Design Guidelines and utilize the guidelines as practicable, and promote green building standards and encourage good planning design. Projects will be required to be in conformance with all Salt Lake City policies, ordinances, and codes.

2. REIMBURSEMENT TERMS

2.1 Maximum Reimbursement Percentage

The maximum amount of tax increment available for reimbursement shall be seventy percent (70%) of the annual tax increment generated from the properties within the Project Area and collected and retained by the RDA.

2.2 Maximum Reimbursement Term

The maximum reimbursement term shall be 20 years or the sum of the remaining operating years of the Project Area, whichever is less.

2.3 Reimbursement Standards: Project Improvements

The standards for calculating the amount of tax increment available to an applicant for Project Improvements, pursuant to 1.3(a), shall be as follows:

- a. Step 1: Calculate the Total Annual Tax Increment from the Project
 - The difference between the base taxable value of the proposed project prior to improvements and the estimated new growth in taxable value resulting from the Project Improvements. (*New Growth – Base Value*)
 - Multiplied by the sum of the current effective tax rate of the participating taxing entities.
$$(New\ Growth - Base\ Value) \times (Effective\ Tax\ Rate) = Total\ Annual\ TI$$
- b. Step 2: Calculate the Annual Tax Increment Collected by the RDA
 - Total Annual Tax Increment multiplied by the taxing entity participation rate (the percentage of Tax Increment collected from participating taxing entities by the RDA)
$$(Total\ Annual\ TI) \times (participation\ rate) = Annual\ TI\ Collected\ by\ the\ RDA$$
- c. Step 3: Calculate the 1st Year Applicant Allocation
 - $$(Annual\ TI\ Collected\ by\ the\ RDA) \times (Reimbursement\ Percentage) = Estimated\ Year\ 1\ TI\ Reimbursement\ to\ Applicant$$
- d. Step 4: Calculate the Maximum Amount of Tax Increment Available to the Applicant Over the Term of the TI Reimbursement Agreement.
 - $$(Estimated\ Year\ 1\ Tax\ Increment\ Reimbursement\ to\ Applicant) \times (the\ Term\ of\ the\ Reimbursement\ Agreement) = Total\ Tax\ Increment\ Available\ to\ Applicant\ Over\ the\ Term.$$
 An annual growth multiplier may be applied to this calculation.

2.4 Reimbursement Standards: System-Wide Improvements

The standards for calculating the amount of tax increment available to an Applicant for System Improvements, pursuant to 1.3(b), shall be as follows:

- a. Step 1: Improvement Plan
In addition to standard application materials required by the RDA for tax increment reimbursement, an applicant shall submit an improvement plan that may, depending on the scope of the proposed project, include the following information:
 - A list of tax parcels comprising the area to be served by the System Improvement (“Improvement Area”), including owners and parcel numbers. These parcels shall be located within the Project Area and be determined to be directly affected and substantially benefited by the System Improvements.

- A map or drawing clearly identifying the boundaries of the Improvement Area, including the location of the System Improvements.
 - The total estimated cost of System Improvements, and the proportion of the total cost that will be paid by the Applicant.
 - Any non-tax increment sources of revenue and/or financing known at the time of application.
 - The proposed period of time for which tax increment will be collected from the Improvement Area for reimbursement on the System Improvements.
 - The anticipated impact the System Improvements will have on future property development.
 - An estimate of anticipated development and future value resulting from System Improvements.
- b. Step 2: Determination of Proposed Tax Increment Structure
- Based on the information provided in the Improvement Plan and the policies contained herein, -the RDA shall make a determination on the following:
- The geographic area and tax parcels that tax increment shall be captured, on a pro-rata basis, for the System Improvements.
 - The total amount and schedule that tax increment shall be reimbursed to offset up-front expenses incurred by the Applicant to develop System Improvements.

2.5 Sufficient Tax Increment

The actual total of the tax increment reimbursement may fluctuate. Tax increment reimbursement is dependent on the development of property and increment being generated, and projects that do not generate sufficient tax increment during the Reimbursement Term will not qualify for the full tax increment reimbursement amount.

2.6 Tax Increment Obligations

The RDA shall only be obligated to capture and reimburse tax increment generated from property taxes paid on behalf of the property.

2.7 Interest

Interest will not accrue against the RDA on the anticipated or projected tax increment to be reimbursed to the developer.

3. EVALUATION AND APPROVAL PROCESS

3.1 Application and Review by RDA Staff

Applications for a new reimbursement agreement shall include an estimate of anticipated total future value, projected construction schedule, recommended future assessed value, the year for commencing tax increment collection and disbursement, and other information as deemed necessary to complete a financial analysis. Applications must be complete to be

considered for approval or denial, and if either the applicant or proposed project fails to demonstrate the ability to meet application requirements, RDA staff may deny the application.

3.2 Application Analysis

Applications that result in, if approved, a reimbursement agreement that reimburses one million dollars (\$1,000,000) or more of tax increment shall complete the following steps to be considered by the RDA. If the tax increment reimbursement is below \$1,000,000, the third party financial analysis may be waived by RDA staff.

a. **Third Party Financial Analysis**

RDA staff shall consult with a third party financial analyst to provide a recommendation with a supporting analysis on 1) the public benefit anticipated to be derived from the proposed project and 3) determination of financial need and whether or not the proposed project might reasonably occur through private investment without the Reimbursement. The third party will also, if applicable, conduct an analysis of comparable values of equivalent properties (both the difference and the percentage relative to comparable values) to ensure that the Reimbursement is not being used to reimburse overvalued land costs. The third party financial analysis shall be provided to the Board prior to the Board's consideration of the Reimbursement application.

b. **RDA Finance Committee Review**

RDA staff shall forward complete applications that meet minimum requirements to the RDA Finance Committee. The RDA Finance Committee shall evaluate applications, supplemental materials, and other documentation necessary to thoroughly review the application and formulate a recommendation to the Board. The RDA Finance Committee shall provide a recommendation of approval or denial of applications to the Board for consideration.

3.3 Board Review and Approval Process

The application and RDA Finance Committee recommendation shall be forwarded to the RDA Board within thirty (30) days of receipt of a completed application. The Board will use best efforts to consider the application within sixty (60) days of the Board's receipt of the application from RDA staff and to take action on the application as soon as reasonably practicable thereafter. The Board shall have the authority to provide tax increment reimbursement approval or denial. Any approval, and the terms of the tax increment reimbursement, shall be made by resolution.

3.4 Agreement Finalization

Once an applicant receives approval from the Board, RDA and the Applicant shall execute an Agreement.

4. AGREEMENT TERMS

4.1 Participation and Reimbursement Agreement Terms

In addition to standard terms outlining the tax increment reimbursement process as recommended by legal counsel, the following terms shall be included in the Agreement:

a. *Reimbursement to Benefit Project Owner: RDA Discretion.*

The RDA intends that the beneficiary of the tax increment reimbursement will be the owner of the project for the life of the Agreement. In the event of a transfer or sale of the property, the Agreement and all benefits conferred under the Agreement shall benefit the project and be recorded against the property to run with the land, with the intent that all tax increment reimbursements will remain with the owner of the real property and project. In the event that the ownership of the real property and improvements are severed, the RDA will have sole discretion to determine the beneficiary of the tax increment.

If the Agreement is executed and the real property and project are conveyed to a third party while the improvements are still being constructed, the RDA will retain the right to consent to the transfer the Agreement to the new owner, in order to ensure that the benefits the RDA anticipated receiving under the original Agreement with the original developer are consistent with the new developer. If RDA does not consent to the transfer of the Agreement, the tax increment reimbursement will cease and the Agreement will terminate.

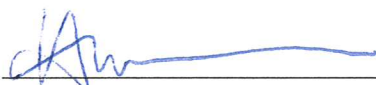
b. *Tax Appeals.*

All reimbursement recipients shall be required to notify the RDA if they have applied for a property tax appeal with Salt Lake County related to the tax increment reimbursement. In the event that any such appeal results in a reduction in property taxes, the percentage share of the tax increment payable to the recipient shall be decreased, and the percentage share of the tax increment payable to the RDA shall be increased, so that the dollar amount payable to the RDA is the same as if no appeal of the assessed value had been made.

Passed by the Board of Directors of the Redevelopment Agency of Salt Lake City, this 21
day of August, 2018.

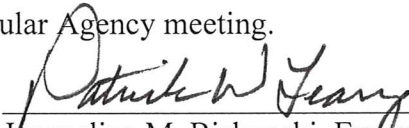

Derek Kitchen, Chairman

Transmitted to the Executive Director on August 22, 2018

Approved as to form: 
Salt Lake City Attorney's Office
Katherine N. Lewis
Date: 7/31/18

The Executive Director:

☒ does not request reconsideration
☐ requests reconsideration at the next regular Agency meeting.


Jacqueline M. Biskupski, Executive Director

Acting Executive Director

Attest:


City Recorder



HB_ATTYY-#71283-v2-NWQ_TI_Policy_Final_(KNL).docx

Exhibit A **Project Area Map and Development Framework**

