



**MEETING MINUTES**  
**JULY 11, 2019**  
**SUGARBUSH RESORT**  
**9:00 A.M. TO 4:30 P.M.**

**Members Present:** Chair John Davis; Mark Nicholson; Thad Richardson; Michael Keane; Rachel Smith; Patricia Horn; Cheryl Hooker; John Russell; and Charlie Kimbell

**Members Absent:** Emma Marvin and Betsy Gentile

**Staff Present:** Megan Sullivan, Executive Director; Abbie Sherman, Grant Programs Manager; Shelley Pembroke Marketing and Projects; Michael Schirling ACCD Secretary; John Kessler General Counsel; Joan Goldstein, DED Commissioner; Ryan Flanagan, ACCD-Intern; and Ken Jones, ACCD Policy Analyst

**Others Present:** Sarah Henshaw, Facilitator; James Stewart, Executive Director, Central Vermont Economic Development Corporation; Seth Bowden, Vice President, Greater Burlington Industrial Corporation; Tyler Richardson, Executive Director, Rutland Economic Development Corporation; Bob Flint, Executive Director, Springfield Regional Development Corporation; Frank Cioffi, President, Greater Burlington Industrial Corporation; Jonathan Cooper, Community and Economic Development Specialist, Bennington County Regional Commission; and Bob Haynes, Executive Director, Green Mountain Economic Development Corporation

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**9:05 a.m. Roll Call and Agenda Review**

Chair John Davis called the meeting to order. Chair John Davis requested a roll call. Members present are noted above. Chair John Davis inquired as to any additions or deletions to the agenda.

**9:11 a.m. Expectations, Ground Rules**

Chair John Davis provided opening comments and reviewed the established goals for the day. Chair John Davis requested introductions of all attendees; staff and others present are noted above.

Megan Sullivan reviewed the State's policy goals and turned the meeting over to retreat facilitator, Sarah Henshaw.

Facilitator Sarah Henshaw initiated the meeting with an ice breaker exercise and reminded attendees of a few housekeeping items, noting that there would be no votes or decisions made today.

### **9:31 a.m. Appreciative Review of VEGI**

Facilitator Sarah Henshaw reviewed topics for group discussions, those being: 1) Highpoints working with VEGI? 2) What contributes to a strong applicant? 3) How are these strengths shared among the regions of the state? Results from the group discussions are included in Sarah Henshaw's notes, attached to and made part of these minutes.

Additional discussion from this exercise noted that a VEGI-ready business may be different for small vs. larger businesses. Ken Jones noted that the best company can't participate in VEGI because of the "but for" criteria and they can't overcome the background growth due to the size of the business. James Stewart agreed noting that the background growth affects both small and large companies, but more for larger. He also noted that the program by design is not for every company and that there is a very small "toolbox" of programs for companies in the state. Megan Sullivan noted that after an application is approved, there are 9 years of filing claims by the company and that both the complication of the VEGI application and the claims process need review. Bob Haynes noted that a lot of companies decide it's not worth it.

### **11:15 a.m. Explore Employment Growth Incentive Programs**

Facilitator Sarah Henshaw provided attendees with five articles prior to the retreat. A group was assigned to each article and asked to name identify highpoints or themes, in terms of the following 3 questions:

- 1) Are there pieces of the approach or what is described in the article that are relevant to Vermont?
- 2) How could it work in Vermont?
- 3) Are there aspects worth discussing further down the line?

The results of the group discussions are included in the notes from Sarah Henshaw, attached to these minutes.

At the conclusion of the discussion, Chair John Davis thanked the RDC representatives for their attendance.

**12:00 p.m.** Chair John Davis adjourned the meeting for lunch.

**1:00 p.m.** Chair John Davis reconvened the meeting and requested a roll call of those still in attendance. VEPC Board members: Chair John Davis; Mark Nicholson; Thad Richardson; Michael Keane; Rachel Smith; Patricia Horn; Cheryl Hooker; John Russell; and Charlie Kimbell. Other Present: Megan Sullivan, Executive Director; Abbie Sherman, Grant Programs Manager; Shelley Pembroke Marketing and Projects; John Kessler General Counsel; Joan Goldstein, DED Commissioner; Ryan Flanagan, ACCD-Intern; Ken Jones, ACCD Policy Analyst; and Sarah Henshaw, Facilitator.

### 1:05 p.m. TIF Review

Megan Sullivan summarized the substantial change request from St. Albans. She noted that the decisions by the Council on some of the questions will impact all TIF Districts. Part of the purpose of today's review is to determine if there is enough information to review request and make a decision. If more information is needed, VEPC staff will work to get from the relevant party. The Council will need to make decisions on the request at their July 25 meeting. Those could include: 1) approving the request and validating the operations St. Albans has undertaken, 2) deny the request and initiate the issue resolution process; or to state that the Council does not believe the questions are a substantial change request. The Council then discussed two of the issues: 1) brokerage fee; and 2) validation of the term of the 2014 bond.

- 1) The brokerage fee charge for the hotel development deal was called an ineligible cost by State Auditor's Office (SAO) because they viewed this as business for a private entity doing private development. In making this judgement, the SAO referred to TIF Rule Section 705 where it states, "Related costs do *not* include: ...Any costs incurred by private entities undertaking development or redevelopment within a District." Megan Sullivan believes that the rule was not intended to be interpreted the way the SAO did. She noted that TIF Rule allows for Districts to have a Coordinating Agency and that the brokerage fee would fit under this definition. The city did give notice to the voters up to \$400,000 in related costs of professional services. Megan Sullivan believes the cost should be treated as an allowable cost that was approved by voters. John Russell noted that in this situation the city owned the property and the scope of work was to develop an RFP to attract a contract. The brokerage fee is a simple term, but the contract was for more than that and would fall under the category of professional services. Cheryl Hooker inquired as to whether there had been any push back from community for the added expense. Megan Sullivan advised that the community passed the vote which included \$400,000 in professional services. She also noted that the city's prospective is this was as essential as engineering for a project to get the private developer to the table in the most beneficial way for the city. Charlie Kimbell wondered if the amount being paid for professional services is reasonable, and whether the staff knows how much White & Burke is being paid. Megan Sullivan advised that VEPC does not require that information and staff does not audit that information. Charlie Kimbell noted that if the contract with White & Burke had been worded to say consulting fees to be paid upon transfer of the property would, VEPC wouldn't be having this discussion. Patricia requested clarification of how the fee was used. Megan Sullivan answered that White & Burke only received the fee if they were successful. John Kessler noted that the contract states that payment is only upon successful closing of that transaction. John Russell stated that he believes the charge is allowable, but the description in the contract was insufficient. John Kessler agreed, stating that the issue with the auditor was that there wasn't much information in the contract of the services provided. Patricia Horn stated that St. Albans didn't have the in-house expertise to brokerage a deal, so they needed to hire out for that. She believes that the amount of the cost seems reasonable, and she

doesn't see this as a substantial change. John Davis asked for confirmation that St. Albans did not go over \$400,000 approved for related costs. John Davis inquired as to whether there is a process for a District to use a coordinating agency. Megan Sullivan noted there is not. Michal Keane referenced the confidential memo the Council received during the city's application about the need for a hotel and the need to redevelop the brownfield which would be an ideal spot for a hotel. John Kessler stated that brownfields are not straightforward transactions and that someone needed to negotiate that sophisticated agreement on that property. John Russell stated that lawyers do not negotiate commercial terms of a deal on a brownfield and that this fee was integral to making the hotel deal successful. He noted that at the end of 20 years, when looking at the increment, the amount of the brokerage fee is nonmaterial when compared to the amount the education fund will be getting at the end of the retention period.

- 2) The exclusion of the term from the September 2013 bond vote was the next issue discussed. Megan Sullivan noted that this item was not a recommendation from the SAO, but the city asked for acceptance of their validation of the vote. The requirement to include the term in the information to voters had just been added by the legislature a month before the bond vote. The City has had the City Council validate their understanding through the process in Title 24. Rachel Smith noted that there should be a review process. Megan Sullivan stated that VEPC staff now provides Districts with a checklist of the requirements to make sure they meet the requirements. John Kessler noted that Dominic Cloud explained that the city provided the total amount of the bond, and the amount per year. John inquired, based on that, whether there was a need to tell the voters the term. Megan Sullivan advised the Council that the response to the city on this item is that VEPC doesn't consider this to meet the requirements of needing a substantial change request. John Kessler suggested asking the City to submit a letter from attorney confirming the validation.
- 3) For the next two issues, the council and staff present broke into two groups to each discuss one topic. Those topics were a) whether costs incurred for site preparation for the hotel were allowable; and b) whether the city could use increment to repay debt proceeds used to pay debt.
  - a. The city incurred costs as part of the brownfield remediation and site preparation for the hotel redevelopment and garage project. The SAO listed costs incurred by city that are not included in brownfield remediation, noting that some might be included in streetscaping work. Those items in question include: costs for the ramp from garage to hotel, costs for installation of utility lines, costs for excavation of certain areas for construction of the hotel, and costs for the some of the structural build of the hotel. Megan Sullivan and John Kessler met with a representative from the Department of Environmental Conservation in preparation for this meeting and gathered more information. Megan Sullivan lead discussion with that group.

Upon reconvening, Megan Sullivan shared that the improvements identified fall into a gray area. The group considered whether these costs could be bonded under normal municipal finance. The group also noted that the hotel project and parking garage project could not exist without the other, and that the ramp between the two was somewhat necessary. The group questioned how much public money was being used for a private developer. The group felt that the developments should be for the benefit of the public or for the purpose of brownfield remediation, and not solely for the benefit of the hotel developer. Megan Sullivan noted that the voters did approve brownfield remediation and streetscape. A consensus on the issue could not be reached and there are questions that remain. The Council has the option to deny the substantial change and refer the matter to the issue resolution process.

- b. The city used debt proceeds to service the debt in the years that increment wasn't available. The Attorney General's Office (AGO) offered a memo that says using debt to pay debt was not allowed. The opinion only considered Title 24 and the definition of improvements for TIF. John Kessler provided a follow-up opinion which agreed with the AGO's opinion, but also considered Title 32 and gave a broader interpretation of what is allowable. John Kessler's opinion questions how a District would pay for TIF debt when increment isn't available. The group for this discussion would need to consider whether this is allowable, including interfund loans. If the group finds that District's can use to debt proceeds to pay TIF District debt, do the Districts need to repay to those proceeds to the TIF Fund. Abbie Sherman lead the discussion with that group.

Upon reconvening, Chair John Davis shared that the group came to a consensus that the AGO and the SAO should have included all of the TIF statutes. The group felt that the way St. Albans bridged the gap in those initial years, by using TIF debt proceeds to pay debt service, was appropriate. Chair John Davis noted that all TIF Districts will run a deficit in the first 2 to 5 years of their life. Patricia Horn added that it is implicit that if a municipality wants to use TIF, then this is the path they would use in those first years. Chair John Davis noted that this new consensus would mean that the Council would need to retract their previous decision that St. Albans would need repay the debt. The Council will also need to clarify in the TIF Rule that TIF Districts can use TIF debt proceeds, including interfund loan, to make debt service payments.

### **3:30 p.m. TIF Rule Change**

The next part of the meeting focused on a draft revision of the TIF Rule. Abbie Sherman provided highlights of major changes to the TIF Rule. After discussing these changes, Facilitator Sarah Henshaw requested input questions that need to be addressed in the Rule. Those

questions involved: 1) legal fees, 2) direct payments, 3) related costs, 4) bridging the gap between when increment is not available and payments must be made, 5) addressing changes as they come up during construction, 6) establishing the line of what construction or improvement costs can be paid for with TIF, and 7) substantial change requests. A summary of the feedback provided by the Council is included in Sarah Henshaw's notes attached to these minutes.

- ❖ **4:15 p.m.** Chair John Davis inquired as any other business, there being none requested a motion to adjourn. Patricia Horn moved to adjourn the meeting. Mark Nicholson seconded the motion. Chair John Davis requested a vote, all voted in favor and the motion passed. 9-0-0.
- ♦ Aye: Chair John Davis; Mark Nicholson; Thad Richardson; Michael Keane; Rachel Smith; Patricia Horn; Cheryl Hooker; John Russell; and Charlie Kimbell
  - ♦ Nay: None
  - ♦ Abstain: None

*Minutes taken by Abbie Sherman, Ryan Flanagan, & Shelley Pembroke: July 11, 2019*

*Revised by Megan Sullivan: July 16, 2019*

*Approved by the Council: July 25, 2019*