



**VERMONT ECONOMIC PROGRESS COUNCIL**

**DRAFT – COUNCIL APPROVAL REQUIRED AT NEXT MEETING.**

**MEETING MINUTES**

**THURSDAY, DECEMBER 15, 2022 AT 9:30 A.M.**

**DEWEY BUILDING, CONFERENCE ROOM 206**

**1 NATIONAL LIFE DRIVE, MONTPELIER, VT**

**9:30 A.M TO 2:00 P.M.**

**Members Attending In-Person:** Chair John Davis; Michael Keane; John Russell; Mark Nicholson; Rachel Smith; Thad Richardson; and Rep. Charlie Kimbell

**Members Attending Virtually:** Heather Chase; and Sen. Cheryl Hooker

**Members Absent:** Mike Donohue

**Staff Present:** Abbie Sherman, Executive Director; Angie Farrington, VEPC Programs Manager; Randall Szott, Economic Development Specialist

**Others Present:** John Kessler, General Counsel, ACCD; George Pierce (Ivy Computers); John Henle (Ivy Computers); Jamie Stewart (CVEDC); Melissa Bounty (CVEDC); Sam Andersen (GBIC); Tim Smith (FCIDC); Al Voegele (NWRPC); Jeff Carr (Economic and Policy Resources); Stephanie Clarke (White & Burke); Chet Hagenbarth (Town of Killington); Polly Mikula (Mountain Times); Lisa Davis (Town of Killington); Jim Haff (Town of Killington); Chris Karr (Town of Killington); Steve Selbo (SP Land); Michael Sneyd (Great Gulf); Lynette Claudon (Vermont DEC); Lyle Jepson (CEDRR); Tyler Richardson (CEDRR); Richard Haesler (City of Burlington); Katherine Schad (City of Burlington); Jared Pellerin (City of Burlington); Ashley Parker (City of Burlington); Stephen Ellis (Paul, Frank, & Collins)

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**9:30 a.m. Roll Call and Agenda Review**

Chair John Davis called the meeting to order. Members present are noted above. Chair John Davis changed the revised the agenda to provide for Executive Director updates occurring earlier in the meeting.

**9:35 a.m. Minutes – September 29, 2022**

Chair John Davis inquired as to any corrections or changes to the draft meeting minutes for September 29, 2022. Hearing none, requested a motion.

- ❖ **At 9:35 a.m.** Michael Keane moved to accept the September 29, 2022, meeting minutes as presented. John Russell seconded the motion. Chair John Davis inquired as to further discussion, hearing none requested a roll call for the vote. The motion passed. 9-0-0

**DRAFT – COUNCIL APPROVAL REQUIRED AT NEXT MEETING.**

- ❖ Aye: Chair John Davis, John Russell, Mark Nicholson, Rachel Smith, Rep. Charlie Kimbell, Sen. Cheryl Hooker, Heather Chase, Thad Richardson, and Michael Keane
- ❖ Nay: None
- ❖ Abstain: None

**9:36 a.m. Public Comment**

Chair John Davis inquired as to whether any members of the public present wish to provide public comment or announcements, hearing none, moved to the next Agenda item.

**9:36 a.m. Vermont Employment Growth Incentive (VEGI): Ivy Computer, Waterbury (Final Application)**

**At 9:36 a.m.** Chair John Davis handed the meeting over to Michael Keane in order to abstain from all discussion and voting on Ivy Computer. Chair John Davis then exited the meeting temporarily.

**At 9:37 a.m.** John Russell moved to enter Executive Session to discuss VEGI applications, citing 1 VSA, §313(a)(6). Rep. Charlie Kimbell seconded the motion. Michael Keane inquired as to further discussion, hearing none requested a vote. All voted in favor and the motion passed. 8-0-0.

- ❖ Aye: John Russell, Mark Nicholson, Rachel Smith, Rep. Charlie Kimbell, Sen. Cheryl Hooker, Heather Chase, Thad Richardson, and Michael Keane
- ❖ Nay: None
- ❖ Abstain: None

**At 9:51 a.m.** the Council exited from the Executive Session.

**At 9:51 a.m.** Mark Nicholson made a motion that the Council approve the Final Application filed by Ivy Computers, for a project in Waterbury, that the Council give final authorization of VEGI incentives of up to \$2,614,696 with an estimated incentive of \$2,418,985 and an estimated net return to the State of \$101,750 due to authorization by the Board of the LMA Enhancement, for activity commencing in 2022 as approved by the Board in December 2021, when the Board determined that the applicant met the But For and other Approval Criteria. John Russell seconded the motion. Michael Keane inquired as to further discussion, hearing none requested a roll call for the vote. All voted in favor and the motion passed. 8-0-1.

- ❖ Aye: John Russell, Mark Nicholson, Rachel Smith, Rep. Charlie Kimbell, Sen. Cheryl Hooker, Heather Chase, Thad Richardson, and Michael Keane
- ❖ Nay: None
- ❖ Abstain: Chair John Davis

**At 9:52 a.m.** Michael Keane handed the meeting over to Chair John Davis.

**9:54 a.m. Vermont Employment Growth Incentive (VEGI):** Resonant Link, South Burlington and Beta Technologies, St. Albans Town (Final Applications)

**At 9:54 a.m.** Michael Keane moved to enter Executive Session to discuss VEGI applications, citing 1 VSA, §313(a)(6). Rachel Smith seconded the motion. Chair John Davis inquired as to further discussion, hearing none requested a vote. All voted in favor and the motion passed. 9-0-0.

- ❖ Aye: Chair John Davis, John Russell, Mark Nicholson, Rachel Smith, Rep. Charlie Kimbell, Sen. Cheryl Hooker, Heather Chase, Thad Richardson, and Michael Keane
- ❖ Nay: None
- ❖ Abstain: None

**At 10:22 a.m.** the Council exited from the Executive Session.

**At 10:22 a.m.** Rachel Smith made a motion that the Council approve the Final Application, filed by Resonant Link, for a project in South Burlington, having found the applicant met the but for criteria in its initial application, and finding that the pending approval criteria for local and regional support have been met, and that the Council give final authorization of VEGI incentives of up to \$941,102 with an estimated incentive of \$878,362, with Green VEGI Enhancement, and an estimated net return to the State of \$226,285, for activity commencing in 2022 as approved by the Board in January 2022. Michael Keane seconded the motion. Chair John Davis inquired as to further discussion, hearing none requested a roll call for the vote. All voted in favor and the motion passed. 9-0-0.

- ❖ Aye: Chair John Davis, John Russell, Mark Nicholson, Rachel Smith, Rep. Charlie Kimbell, Sen. Cheryl Hooker, Heather Chase, Thad Richardson, and Michael Keane
- ❖ Nay: None
- ❖ Abstain: None

**At 10:25 a.m.** Rachel Smith made a motion, that the Council approve the Final Application, filed by Beta Technologies, Inc., for a project in St. Albans Town, that the Council give final authorization of VEGI incentives of up to \$1,634,006 with an estimated incentive of \$1,514,903, with Green VEGI Enhancement, and an estimated net return to the State of \$730,912 for activity commencing in 2022 as approved by the Board in March 2022, when the Board determined that the applicant met the But For and other Approval Criteria. Rep. Charlie Kimbell seconded the motion. Chair John Davis inquired as to further discussion, hearing none requested a roll call for the vote. All voted in favor and the motion passed. 9-0-0.

- ❖ Aye: Chair John Davis, John Russell, Mark Nicholson, Rachel Smith, Rep. Charlie Kimbell, Sen. Cheryl Hooker, Heather Chase, Thad Richardson, and Michael Keane
- ❖ Nay: None
- ❖ Abstain: None

**10:29 a.m. Killington TIF District – Phase 1 Filing**

Abbie Sherman advised the Council that Killington had submitted their First Phase Filing, following VEPC's approval of the District in June 2022. Stephanie Clarke summarized the Killington Phase Filing, noting that the Town expects to break ground in late spring 2023. The Town's TIF Plan had four identified phases. This filing was for the first phase of water and road improvements, providing a water system from Route 4 to the top of the mountain and over to Killington Road and improvements to Killington Road. Clarke explained other sources of funding that will be utilized in addition to TIF financing. A bond vote will be scheduled in March of 2023.

Angie Farrington presented a staff summary on the Phase 1 Filing. She noted the total Phase 1 Filing costs have increased by 20.7% since VEPC approval in June of 2022 - with water infrastructure increased by 10.8% and roadway improvements, increased by 39.4%. While the projects costs for this phase have increased, the District is comprised of two projects: Water Infrastructure and Roadway Improvements. How those projects are phased over the debt incurrence period is expected to change and does not require Killington to submit a substantial change request at this time but will be monitored as a future substantial change request may be required.

Farrington noted that Vermont Agency of Natural Resources reviewed the scope and project costs of the proposed Phase 1 Water System project and found no major issues. The Vermont Agency of Transportation reviewed transportation improvement costs and recommended that the Town of Killington re-evaluate contingency and unit pricing on items to ensure they are not overly inflated. Higher cost estimates are not necessarily a concern at this point as all data points in the Financing Plan are conservative. Based on EPR's review, the District is able to show viability using these higher costs estimates provided.

Farrington reiterated that Killington is seeking other funding sources, but since they will not be known before the bond vote in March of 2023, the Town will be asking voters to authorize a "not to exceed" debt limit of \$47 million. As additional funds are secured, the Town will not need to draw down as much debt and will likely not incur the full \$47 million by the time Phase 1 is complete.

Farrington summarized that the Killington TIF First Phase Filing submission has made a complete and appropriately detailed First Phase Filing that is sufficient for the Council to make positive findings under the two-remaining evaluation criteria of Market Viability and Fiscal Viability.

Rep. Charlie Kimbell inquired about the Town's ability to manage the cumulative deficit in the early years of the TIF District. Chet Hagenbarth indicated they have reserve funds and some maturing bonds that will free up funds. Kimbell also asked about the estimated \$47 million of indebtedness and what the expected actual number might be. Clarke did not have a more concrete estimate at this time but did believe it will be lower. Kimbell also inquired about the

lower tax rate due to the anticipated townwide reappraisal and Jim Haff replied that the revenues anticipated will be unaffected as it is based on the incremental values, not current values.

**At 11:03 a.m.** John Russell made a motion that the Council approve the Killington TIF District's Phase 1 Filing, finding that the documentation provided is consistent with the approved TIF District Plan and TIF Financing Plan and that sufficient evidence has been provided to show that the District is fiscally and financially viable. Michael Keane seconded the motion. Chair John Davis inquired as to further discussion, hearing none requested a roll call for the vote. All voted in favor and the motion passed. 9-0-0.

- ❖ Aye: Chair John Davis, John Russell, Mark Nicholson, Rachel Smith, Rep. Charlie Kimbell, Sen. Cheryl Hooker, Heather Chase, Thad Richardson, and Michael Keane
- ❖ Nay: None
- ❖ Abstain: None

Lyle Jepson expressed thanks to Agency staff and noted the historic nature of the funding and lauded the town's efforts.

#### **11:19 a.m. Montpelier TIF District Termination.**

Abbie Sherman updated the Council on the dissolution of the Montpelier TIF District. She said no debt was incurred and that it frees up a slot for another municipality to utilize. Montpelier also has the option of reapplying with a future TIF District.

#### **11:22 a.m. Executive Director Updates**

Abbie Sherman summarized the creation of the Community Recovery and Revitalization Program (CRRP), and then deferred to Angela Farrington to present on the municipal applications to the program. Farrington summarized the program and covered the requirements of the Council's review of applications.

Abbie Sherman provided the following updates to the Council:

- ◆ A TIF Rule update was provided to the Council and Sherman noted that a draft was provided to Tax, the Auditor's Office, and the Joint Fiscal Office on December 1. Comments and feedback from those offices is expected by January 12.
- ◆ The Agreed Upon Procedures Document for TIF is in the process of being updated and is currently being reviewed by the Auditor's Office. The revised document will take effect next year.
- ◆ Staff received a Construction Agreement pertaining to the Burlington Waterfront CityPlace project. The agreement does not include the \$50 million completion guarantee required by the legislature. Sherman said John Kessler is reviewing the document to see if there are any areas that should be brought to the Council's attention.

- ♦ VEPC staff attended the exit meeting for the Burlington Waterfront State audit. The information is not yet public, but Sherman believed it will be released before the next Council meeting.
- ♦ Sherman noted that Angie Farrington has been working with the town of Hartford to update the project list on their TIF Annual Reporting Form. The changes are to update project names to match those in the phase filings and to combine engineering costs which are for the same project onto one line in the report.
- ♦ Sherman provided the Council with an update regarding proposed VEGI and TIF legislation.

Chair Davis acknowledged the service of Rep Kimbell and Sen. Hooker on the Council and extended thanks to them. He also thanked Heather Chase and noted her departure from the Council in order to serve in the legislature. He noted the shortage of members for the Council will increase quorum pressures until the vacancies are filled.

At **12:00 p.m.**, the Council broke for lunch, reconvening at 1:00 p.m.

**1:00 p.m. TIF Districts - Burlington Downtown Champlain College Development Fee – Issue Resolution**

Abbie Sherman summarized the Burlington Downtown TIF Development Fee issue, noting that an issue of non-compliance was found as part of the Spring 2022 monitoring visit regarding inconsistencies with the approved Substantial Change Request from 2020. At the July 2022 VEPC meeting, Sherman mentioned that there seemed to be some confusion regarding when Burlington needed to start putting the Champlain College Development Fee payments into the TIF Fund. The Council asked that Burlington provide further explanation, and Burlington provided a memo of their explanation. Sherman noted that review of this matter is following the issue resolution process outlined in TIF Rule.

Sherman stated that the issue comes down to the 2020 and 2021 Substantial Change Requests which were approved by VEPC. The 2020 Substantial Change Request from the city included the development fee as another source of revenue used to pay debt service and related costs from 2017 to 2036. As part of the review of that request, ACCD General Counsel John Kessler's noted that the fees contribute substantial amounts to the city's costs of TIF improvements and serves as an additional source of revenue. The VEPC staff write-up review included the effect of the development agreement on the Education Fund, noting that the development of the property did not cause an increase in Grand List values that was originally anticipated and that the Education Fund does not benefit from fees generated from the development agreement.

Sherman noted that during the course of the review of the 2020 request, VEPC formed a sub-committee. The minutes from that meeting noted there would be follow up with the city to ensure they understand that the financing plan, which the city prepared and submitted. City staff confirmed that "the information contained in the submitted Financing Plan is indeed consistent with what we at the City are proposing."

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The Council subsequently approved the City's substantial change request, requiring that the fee be deposited into the TIF Fund to be used for debt service and related costs. The motion by the Council noted that the requirement is included in the revised TIF Financing Plan which is a source document for monitoring and auditing the TIF District.

Sherman then moved on to the 2021 request, where the narrative provided by the city for that request did not ask for a change in the determination VEPC had made in 2020. It identified that the development fee funds are being deposited into the TIF Fund. The narrative also noted that tables in the financing plan are forward looking, beginning with 2022. Since a change in the retention of the development fees was not requested, VEPC staff's review and the Council's approval of the City's request did not take a change such as that into consideration. The information as presented in both requests was relied on for the Council to make determinations and approve the requests. Sherman noted that TIF Rule does not have a time limitation for the Council to consider a resolution to this issue. While Sherman made a recommendation in her review, she noted that the Council could create a subcommittee to review the issue.

Chair Davis inquired about where the confusion about payments occurred and why payments were not made. Richard Haesler indicated the city understanding was that the payments were prospective in nature as the funds had been allocated elsewhere. They understood in 2020 they had to set up an account and make payments, but that there was an apparent differing understanding of the nature of the payments. The existing debt structure did not include the payments in their reports and so Haesler believed there may have been some misunderstanding about fiscal and calendar years.

Stephen Ellis indicated he reviewed the communication between VEPC staff and city officials. There was agreement that the payment would be made into the TIF fund, but there seemed to be a misunderstanding of when the payments would start. He stated that there should be a straightforward resolution and proposed that the issue be tabled and that the matter be negotiated by VEPC and the city of Burlington.

Thad Richardson asked if the 2022 payment was in the TIF Fund. Haesler said yes, but indicated he thought only FY 21 was in dispute and only recently came to understand that additional prior fiscal years were in play.

Abbie Sherman asked about the financing plan as provided in the city's 2020 substantial change request and city staff's confirmation at that time of the information presented. Haesler said the city believed they were acknowledging the receipt of funds. Ellis said he believed there is no evidence of an alternate understanding indicating a retroactive payment into the TIF Fund as the result of a substantial change.

Rep. Kimbell said he had a different recollection than the city of the 2020 request, whether or not it was retroactive, payment of the \$260,000 was expected to start right away, and now in 2022 no payment had been made. Chair Davis recommended that city staff go to the City Council and return to VEPC with a proposed solution. He solicited consensus from the Council

and inquires as to further questions or comments from the Council on the matter. John Russell asked whether a substantial change request was necessary, wanting to see how the non-payments he understood that were to be made were a basis for his approval of previous change requests. Chair Davis acknowledged they need to see revised cashflow calculations but still wanted to see a proposal from the city by January 6<sup>th</sup>.

**At 2:06 p.m.** John Russell moved to adjourn the meeting. Michael Keane seconded the motion. Chair John Davis requested a roll call for the vote, all voted in favor and the motion passed. 9-0-0.

- ❖ Aye: Chair John Davis, John Russell, Mark Nicholson, Rachel Smith, Rep. Charlie Kimbell, Sen. Cheryl Hooker, Heather Chase, Thad Richardson, and Michael Keane
- ❖ Nay: None
- ❖ Abstain: None

*Minutes taken by Randall Szott: December 15, 2022*

*Revised by Abbie Sherman: December 21, 2022*

*Approved by the Council:*