



VERMONT ECONOMIC PROGRESS COUNCIL

FINAL MEETING MINUTES

March 28, 2024

VIRTUAL VIA ZOOM

9:30 A.M. TO 12:00 A.M.

Members Attending In-person: Chair John Russell; Sen. Wendy Harrison; Rep. Stephanie Jerome; Jamie Stewart; Rachel Smith; and Kim Gobeille

Members Attending Virtually: Michael Keane; Thad Richardson; Mark Nicholson; and Mike Donohue

Members Absent: Heather Chase

Staff Present: Jessica Hartleben, Executive Director; Ellie Beckett, VEPC Program Manager; and Judy Bruneau, Economic Development Specialist

Others Present: David White, White & Burke; Brian Pine, City of Burlington; Ashley Parker, City of Burlington; John Kessler, ACCD General Counsel, Jeff Carr, Economic and Policy Resources; Bill Sayre, Addison County; Sam Andersen, GBIC; Alex Demoly, GBIC; and Tanya Morehouse, State Auditor's Office

9:31 a.m. Roll Call and Agenda Review

Chair John Russell called the meeting to order. Members present are noted above. Chair John Russell inquired as to any additions or deletions to the agenda, hearing none, moved on to the next agenda item.

9:32 a.m. Minutes – February 29, 2024, Regular Meeting

Chair John Russell inquired as to any corrections or changes to the draft meeting minutes for the February 29, 2024.

Senator Wendy Harrison suggested an amendment that clarifies the proposed ACT 250 changes, which is as follows: "Tier 1 is Towns with robust zoning and staffing, Tier 2 is what is not Tier 1 or 3 and Teir 3 would be natural areas that should be protected. The tier proposal was supported by developers, businesses, and conservationists."

9:33 a.m. Wendy Harrison moved to accept the February 29, 2024, meeting minutes as amended, Jamie Stewart seconded the motion.

Chair John Russell inquired as to any further discussion, hearing none requested a roll call for the vote. All voted in favor and the motion passed.

9-0-1

- Aye: Chair John Russell; Sen. Wendy Harrison; Rep. Stephanie Jerome; Jamie Stewart; Michael Keane; Mark Nicholson; Rachel Smith; Kim Gobeille; and Mike Donohue
- Nay: None
- Abstain: Thad Richardson

9:37 a.m. Public Comment

Chair John Russell 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.

9:37 a.m. Burlington Downtown District Substantial Change Request

Executive Director Jessica Hartleben provided a summary of the staff review. This is a continuation of the review of the City of Burlington's submittal of their July 2023 substantial change request and review of their adjustment of equal share for the Burlington Downtown District. The Council postponed further action until the City could provide a revised financial plan and a response to the then-pending Auditors' Report. In January 2024, the Auditor released his report and the City of Burlington submitted updated documents as required by VEPC.

In response to the State Audit, the cover letter from the City of Burlington states the single biggest concern expressed by the State Auditor's Office was about the City's use of bond premiums to help finance the Downtown TIF projects. The City submitted letters from the City and from the Staff Attorney outlining the City's position. Beyond the question of the bond premiums, the State Auditor's Office had ten specific recommendations. The City accepted all ten and is currently working to implement them. The final result of the recommendations on the District's revised Financial Plan is a small reduction in the TIF fund balance will close out in FY2023.

The City of Burlington provided a final budget for the Main Streets Great Streets project, which has been approved by the City Council. When the bids were opened, the City explained that the lowest bid came in nearly 50% higher than what it was originally estimated. To solve the issue, the City selected the following approach, "a mix that includes: 1) value engineering items to cut the costs, 2) reducing the project area from six blocks of Main Street to three blocks, plus renovation, replacement, and relocation of the ravine sewer, and lastly additional funding from other City sources.

The City of Burlington submitted a revised Financial Plan that addresses the bond premium concerns in which they state, "The upshot is that the bond premiums have been included in the information provided previously, they simply have not been

explicitly called out as such.” The City made four changes since the last Financial Plan was submitted. These include: 1) the change from 75% to 69% of education increment from FY24 going forward, 2) a shift in how the bond premiums are displayed as a source, 3) a final budget for the Great Streets Main Streets Project, and 4) an update to cash flow reflecting the actual FY23 year-end TIF fund balance as determined by the State Auditor’s Office.

In a standard audit of the district, the Auditor’s Office discovered the City had issued bond premiums above the levels that were previously approved by VEPC, which the City is using to pay for infrastructure costs (rather than to reduce the par value of the bonds). In Vermont, the City of Burlington is the only municipality that can issue bonds directly. All other cities and towns issue bonds through the Vermont Bond Bank. The Vermont Bond Bank uses premiums to reduce the par value of bonds. This is a unique situation in that Burlington is the only City in the state of Vermont that can issue bonds directly, leading to a novel question, not previously considered by our state statute or VEPC rules. The City’s position is that while they have not explicitly called out their usage of bond premiums, they have issued all their TIF bonds with premiums and treated them the same way.

Burlington’s decision to use bond premiums as proceeds to pay for increased infrastructure projects is not uncommon for regular municipal bonds. However, TIF bonds are different, because in TIF borrowing, a municipality is borrowing more than the VEPC-approved amount. This additional borrowing could have a negative impact on the Education Fund, which VEPC has an interest in protecting.

Regardless of the actual impact, the potential impact could have been approved or considered by VEPC had the City been transparent about their bond premium usage in past issuances. Due to this lack of transparency, VEPC now finds itself in a situation where they must either approve this usage and accept an unknown and potentially negative impact on the Education Fund or risk allowing failure of the entire district.

While VEPC may have an opinion on the usage of bond premiums as proceeds, and the impact on the Education Fund, the Vermont statute and TIF rule are silent on the usage of bond premiums in TIF districts. Therefore, the advice of the ACCD attorney, John Kessler, is that VEPC does not have the legal authority to disallow the use of the bond premium.

9:48 a.m. Jeff Carr provided the Council with his written analysis of the City of Burlington-Downtown District’s revised Substantial Change Request. He also points out the differing treatment of bond premiums by the Vermont Bond Bank and that this issue is specific to Burlington. He notes that the City has worked hard as he has stated in the second paragraph to do reasonable things to try to find a path through a difficult environment with rising construction costs and the pandemic and come up with a potentially viable TIF district that would work and protect the financial integrity of the Education Fund.

The issue of bond proceeds is a tricky one for the Council, because TIF rule and statute are generally silent. Treatment of bond proceeds over the years have differed by differing organizations. Into the 2010s, the State Treasurer's Office as a normal matter of course when the State received bond premiums, reduced the value of par by the size of the bond premium in order to use that bond premium as a way to reduce the amount of debt that was outstanding and to keep their interest and their debt service costs under control.

There is a wide disparity in the treatment of bond premiums in municipal debt issuance. Some municipalities limit the ability to use a bond premium to a certain percentage over par usually 1% of par and anything over that is used to pay down the par value of the bond. Those are done by statute. From the Councils policy perspective, since all the other municipalities go through the Vermont Municipal Bond Bank, this is something that the Council doesn't have to deal with for other TIFs. This is something specific to only this municipality.

In Jeff's opinion, the issue is whether Burlington could secure an additional 4.6 million dollars in alternative funding to complete the Main Street Great Streets project. He believes this to be a big ask of any community, including Burlington. If the Council is looking to protect the integrity of the Education Fund, it has already done that with the adjustment of the Education retention percentage with the last decision the Council made. If the bond premiums are not allowed to be used for the infrastructure costs, the Council should consider if the City will be able to finish the Great Streets project. The project is vital for providing infrastructure for the private sector increment which is needed to service the debt. If the City isn't allowed to complete the final infrastructure project, it would be difficult to generate the increment to service the debt and eventually return money at the end to the Education Fund.

VEPC Council member Michael Keane asked Jeff Carr what would be the worst outcome that can happen? Jeff responded saying that somehow if the City can't finish the infrastructure project and they can't generate the increment to service the debt and then the taxpayers and the City are going to be on the hook without a source to pay it.

Attorney John Kessler orally provided his legal opinion to the Council. The statutes that legislate TIF are related to borrowing and indebtedness. The bulk of the statute is about how municipalities can bond and take on debt are outside of the recent TIF statutes and so the reason the statutes are silent is really because it wasn't considered. It's just too far down in the weeds when the TIF statutes were written to consider what if this or that or what if there is a bond premium. A municipal bonding attorney in Burlington would only see it through that lens and the City has borrowed through that lens but there isn't a different restriction placed on that in TIF.

City of Burlington, Economic Development Director, Brian Pine emphatically apologized to the Council for the City's failure to clearly communicate and acknowledged there were some missteps with disclosure and communication regarding issuance of the 2022 bond. The City has learned and taken steps to rectify this situation. The City agrees the

disclosure could have and should have happened much sooner. Brian asked Dave to speak on the City's decision making.

Following the City of Burlington's comments, David White of White and Burke stated the critical thing from the City's side is the City acted in good faith. David quoted statute 24, subchapter 5, section 1898, is specific to tax increment financing and how that financing goes forward. Subsection (f) says the bonds may be sold at "not less than par." This suggests that a bond sold above par is acceptable. David referenced the memo he wrote about potentially saving millions of dollars; had the City not closed, the interest rate probably would have been 2% higher because the federal reserve increase over the next two months. David acknowledged the tension between the impact on the Education Fund the reality that the bond premium being higher and that has an impact. The City acted prudently and acted on authority that is in statute and acted in good faith in the best interests of all parties.

Chair John Russell asked when this construction project will be completed.

Ashley Parker and Brian Pine answered that it would have to go through a season or two with a completion date of 2025. At this time the biggest unknown was the ravine sewer, and the City is pretty far into the project. The ravine sewer is a \$6-million-dollar piece of a \$30 million dollar project.

10:11 a.m. John Kessler stated the role of VEPC Council and it is clear that VEPC's job is to give approvals for Ed fund dollar usage. The earlier that novel questions come to the Council the better. One of the strongest messages that the Council could give the City of Burlington is that the City was using bond premiums to increase for access to project costs in the hundreds of thousands of dollars and it would have been an easier conversation if that had been disclosed to the Council, than what is currently before the Council, which is, what are bond premiums and how do they all factor into VEPC's approval process for substantial change analysis, when the amount is 4.6 million dollars. Attorney Kessler advised that the Council has a protective role, and the roots go back to 1998.

10:15 a.m. Chair John Russell asked if there were any questions from Council members for Jeff Carr, John Kessler, or the City.

Michael Keane commented that he wished the City's communication was better and that the issues were brought to VEPC Council with more candor.

10:16 a.m. Chair John Russell stated the issues have centered on lack of communication and information provided by the City of Burlington. The Council is a steward of the Educational Fund dollars, and the Legislature is very keenly focused on Ed Fund dollars, especially this session. It is imperative that VEPC be allowed to do their job and pass judgment and we have a lot of very smart, intelligent people on this Council and unfortunately the situation we are in now is anything other than an approval of the substantial change request really would hurt, Burlington, the City, the Ed Fund

overall long term. VEPC is in a box and if we can improve the communication going forward we won't have to be backed into a corner for decisions.

Jamie Stewart noted that the Council is having a lot of trouble with this request because the TIF program is different from other typical municipal bonding. The limit to that bond is being set by a separate body, in this case, the Council. He asked how Burlington justified the fact that they exceeded the bonding authority given to you by the Council.

David White of White and Burke responded to the comments from VEPC Council and stated, Burlington did not exceed the authority. The principal value of what we borrowed did not exceed what was approved by VEPC. What the City got was a bond premium and the bond premium is not part of the principal value. It does result in higher interest payments, but it does not technically exceed the borrowing. We don't repay the principal in the value of the premium.

VEPC Council member, Jamie Stewart said he understood the legal and accounting world allows for those things to occur, and it was a little disingenuous for Burlington not to report this to the Council when it happened.

Chair John Russell stated that there was interest being paid on the bond premium and that interest is being repaid with TIF increment. When the Council approves the financing plan, we approve the debt limit. We don't know what the market is going to do and how much the bond premium is there so then again, it's just disclosure.

Tanya Morehouse, from the State Auditor's Office commented on the workbook that is submitted by all the municipalities shows how they are going to pay for the improvement project costs has a column which shows the TIF portion. What will be funded by the TIF and the dollar amount that VEPC approved in 2021 was \$35,920,000. The amount that the City intends to spend is 40.5 million. That is the disconnect that we pointed out in the report. That VEPC authorized the City to spend 35.9 million dollars for improvements but through whatever mechanisms were employed, the City received proceeds that would allow them to invest 40.5 million which exceeds the limit that VEPC approved. That is the issue that we got stuck on in the report. It's not if the bond premiums are allowed or not. We acknowledged in the report that municipalities have a lot of discretion in terms of how they structure their debt but what they do can't result in exceeding what VEPC has authorized to be invested in TIF districts. Whether they issued a bond with higher principal amounts and that caused them to exceed what the limit was that was set by VEPC or because investors desired to pay more for the bond so a premium was generated. Whatever the underlying cause was the end result is they exceeded the amount that VEPC authorized. The City's memo says that the State Auditor's Office biggest concern was the use of bond premiums, that's not entirely accurate. The premiums are what caused the City to go over the authorized amount. But we didn't call out the use of premiums themselves as a particular issue. We did point out that the public information notice that was provided to voters said that interest was going to be 4 million and then interest turned out to be 12 million we thought that was a little bit of a problem in terms of voters being able to understand the financial

implications were for what they were voting on. But we did not say the use of bond premiums was not allowed.

Attorney John Kessler opined that the Council has wrestled with how do you define or how do you set provisions in a rule that say when it is substantial. And that is not easy. And to answer the question, you don't always know the exact number and that is the case here. There is a difference between having more money to spend through bond premiums and having given the Council as the overseer of TIF the ability to look at that and say it is approved and/or has an impact on the Ed Fund.

Chair John Russell asked John Kessler do we authorize if the total amount that they can spend or the total amount they will bond for?

John Kessler opined generally that a projects scope and costs are fluid and reiterated that it is important and necessary for municipalities to be forthcoming and transparent with the Council as these fluctuations occur.

Senator Wendy Harrison asked if VEPC is concerned with TIF projects going over budget if it doesn't impact the Ed Fund.

Chair John Russell and Jessica Hartleben confirmed VEPC approves the financing plans and financing plans for TIF districts, which can also include non-TIF revenues, grants, development fees etc. The financing plan can indicate that those funds are used first before increment is used to pay debt.

Thad Richardson commented that VEPC is responsible for the Ed Fund money that is allowed to be used to serve as debt and looking back at our substantial changes in the past they have all been related to a change in the total debt or a change in the actual district itself or a percentage of increment retained. The City can spend whatever money it wants to if it is not required to be repaid with Ed Fund dollars or at least I think that is what it boils down to. Thad thought the request was above board and thought the Council should move on.

Tanya Morehouse commented that if the Council isn't ready to finalize this issue today, the Council could ask the City to provide different scenarios. For example, show what would happen if you had to pull out 4 million dollars of costs.

The City and David White, of White and Burke commented that Burlington does not have another source of funds to pay for the infrastructure improvements.

Council Member, Kim Gobeille asked if the scope of the project being reduced to three out of six, is there anything that is substantial that is not being connected now or left out.

Ashley Parker stated the reduction did remove the three blocks which does have some connectivity concerns, and the City maintained that as a separate project and are

actively searching for funding to try to complete the second half of this Main Street project.

10:51 a.m. Jessica Hartleben read a list of items that the Council has to consider when making the determination to allow or deny a substantial change, the Council will consider whether, and the degree to which, the substantial change:

- 1: Would violate any of the approval criteria including Location Criteria, Project Criteria, Purpose, Viability, Nexus or Proportionality;
- 2: Would change the overall cost of infrastructure (increase the liability) or the generation of revenue (revenue reduction) to a degree that adversely impacts fiscal viability.
- 3: Would require that additional education property tax revenue be utilized without offsetting private development that would increase the grand list and generate additional Education property tax revenue;
- 4: Would cause the education property tax revenue to increase;
- 5: Would have an impact on the financial viability of the District; and
- 6: Would put at risk the long-term economic benefit and the achievement of other District objectives.

The Council has 60 days to make the determination request and the clock would start today. Jessica did work with Jeff Carr at EPR and he noted the fiscal viability of the district could be one factor that was potentially impacted all of the other issues are not affected by this request.

10:53 a.m. Chair John Russell asked if any Council members had any questions or comments.

10:53 a.m. Chair John Russell said the Council had a motion prepared. The key takeaway here is requiring the City, anything other than just approving the new financing plan would require the City to find 4.6 million dollars and that would affect the viability of the TIF district. It's unfortunate that we are here at such a late date with this substantial change request. This process affords us the ability to make adjustments to the financing plans just as we are doing here, this one just happens to be a little bit late.

10:59 a.m. Chair John Russell asked the Council members what their informal thoughts were moving forward.

10:59 a.m. Jamie Stewart commented there are some issues with semantics but in reality, he does not think VEPC has the authority to disallow this as there is nothing in the rules that say they can't do this. It comes back to there was a communication issue that raised a lot of issues, and this could have been prevented from happening, but I do not know if VEPC has any authority to deny it at this late date. Although this is a little frustrating, at the end of the day he would vote to approve the substantial change request.

11:00 a.m. All VEPC members present concurred with Jamie Stewart's opinion.

11:07 a.m. Kim Gobeille moved that the Council approve the substantial change request submitted by the City of Burlington as presented in the financial documents submitted in July 2023. Updated by the City in February 2024 and as presented by the VEPC Board Meeting dated March 28, 2024, in finding that the amendments meet the criteria for approval and that the documents provided show the TIF district continues to be fiscally and financially viable. Jamie Stewart seconded the motion.

11:08 a.m. Chair John Russell inquired as to further discussion, hearing none requested a roll call for the vote. The motion passed. 10-0-0

- Aye: Chair John Russell; Sen. Wendy Harrison; Rep. Stephanie Jerome; Jamie Stewart; Michael Keane; Thad Richardson; Mike Donohue; Mark Nicholson; Rachel Smith; and Kim Gobeille
- Nay: None
- Abstain: None

11:09 a.m. Burlington Downtown District Adjustment of Equal Share

Executive Director Jessica Hartleben provided a summary of the Staff review to the Council.

The City's period to incur debt expired March 31, 2023. In August 2023, the Council reduced retained TIF increment from 75% to 69%. VEPC Staff recommendation at this time is to approve the City of Burlington's current equal share adjustment. Staff further recommends that the Council have the City of Burlington return in three years for another review of their equal share adjustment by providing an updated TIF district financial plan. In three years, the Council could consider further reducing the equal share adjustment of the Education Fund and potentially reducing the municipal fund.

The Council discussed whether they should adjust the equal share adjustment and what an appropriate timeline would be to review future adjustments. The Council agreed generally that three years would be appropriate, but agreed that the Council should add language to the motion with the option to require Burlington come back earlier, if VEPC staff thought it was appropriate based on ongoing annual monitoring.

11:17 a.m. Jamie Stewart moved that the Council maintain the current adjustment of equal share, which was adjusted in August 2023, by the Council in which the City of Burlington retains educational increment of 69%. The Council reviewed the financial plan as part of the statutory requirements to review the equal share adjustment as Burlington has now incurred all the TIF district debt. I further move the Council to review the equal share adjustment in March 2027 or an earlier time if warranted. Mike Donohue seconded the motion.

11:18 a.m. Chair John Russell inquired as to further discussion, hearing none requested a roll call for the vote. The motion passed. 10-0-0

- Aye: Chair John Russell; Sen. Wendy Harrison; Rep. Stephanie Jerome; Jamie Stewart; Michael Keane; Thad Richardson; Mike Donohue; Mark Nicholson; Rachel Smith; and Kim Gobeille
- Nay: None
- Abstain: None

11:20 a.m. Executive Director Updates

Executive Director Jessica Hartleben provided the following updates to the Council:

TIF monitoring visits for all nine of the TIF districts will be scheduled for May and June. Council members are encouraged to attend monitoring visits to learn more about these districts.

VEGI Applications: Potential interest from two companies, one looking to relocate to VT and one looking to expand operations.

Legislative Update-ED Hartleben recently testified in both House and Senate Economic Development Committees to introduce herself in this new role. Chair Russell and Jessica testified in House Economic regarding proposed changes to VEGI legislation in H.10.

Chair Russell expressed to the Council that after his testimony in House Economic the Council needs to do a better job with communication and outreach to legislators who are not as familiar with the VEPC council, and the VEGI and TIF programs the Council administers.

Jessica asked the Council to review H.10 and S.247 and provide comments to her.

Rep. Stephanie Jerome said she thought it would be a great help to have a consistent member from the House and a consistent member from the Senate on the Council to help facilitate understanding and communication back to the legislature.

10:44 a.m. Chair John Russell wanted to express what a tremendous job that Jessica, Ellie, and Judy are doing in their new positions given the lack of overlap in previous staffing.

At 10:45 a.m. Jamie Stewart moved to adjourn the meeting. Michael Keane seconded the motion.

Minutes taken by Judy Bruneau: March 28, 2024
Revised by Jessica Hartleben: April 3, 2024
Approved by the Council: May 30, 2024