

CITY COUNCIL
BUSINESS AND COMMUNITY AFFAIRS COMMITTEE MINUTES

June 7, 2012

The City Council Business and Community Affairs Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 9:00 a.m. in the Conference Room on the 7th day of June 2012, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Lockett and Quinn

ABSENT: Councilmember Spaulding and Chairman Ezzell

OTHERS PRESENT: Councilmember Dillingham, Ward Four
Councilmember Roger Gallagher, Ward One
Councilmember Tom Kovach, Ward Two
Mr. Chris Arbour, 9410 East Franklin Road
Mr. Trey Bates, 3720 Timberidge Drive
Mr. Mark Campbell, Post Office Box 3053
Mr. Chadwick Cox, 2241 Ravenwood Lane
Mr. Caleb Creed, 9410 East Franklin Road
Ms. Jacy Crosbie, 204 Mountain Oaks Drive
Ms. Jayne Crumpley, 423 Elm Drive
Mr. Nate Ellis, Public Finance Law Group
Mr. Steve Ellis, 633 Reed Avenue
Ms. Mary Francis, 850 C Cardinal Creek Condos
Ms. Joy Hampton, The Norman Transcript
Mr. David Hopper, 1620 Oriole Drive
Ms. Cynthia Rogers, 633 Reed Avenue
Mr. Rick Smith, Municipal Finance Services
Mr. Chuck Thompson, Republic Bank
Mr. Stephen Tyler Holman, 1030 South College
Mr. George Oxsen, 321 Orr Drive
Mr. Gail Poole, 705 Tiffin
Mr. Fred Pope, 1501 Navajo Road
Ms. Nance Ross, 15039 S.E. 136th, Newalla
Mr. Tony Tyler, Tyler Outdoor Signs
Mr. Gary Vitello, 609 Shadow View Court
Mr. Charles Wesner, 616 Tulsa Street
Mr. Don Wood, Norman Economic Development
Coalition Executive Director
Mr. John Woods, Chamber of Commerce Director

STAFF PRESENT: Mr. Jeff Bryant, City Attorney
Mr. Terry Floyd, Development Coordinator
Mr. Steve Lewis, City Manager
Mr. Shawn O'Leary, Director of Public Works
Ms. Syndi Runyon, Administrative Technician IV

Item 1, being:

FOLLOW-UP DISCUSSION REGARDING THE CREATION OF THE NORMAN ECONOMIC DEVELOPMENT TRUST AUTHORITY.

Mr. Steve Lewis, City Manager, introduced Mr. Nate Ellis with Public Finance Law Group and Mr. Rick Smith with Municipal Finance Services, and said they were invited today to help answer questions raised at the Public Forum held on May 29, 2012.

Mr. Jeff Bryant, City Attorney, said the possible creation of the Norman Economic Development Trust (NEDA) was discussed at the forum and a number of questions and concerns were raised by Council as well as the public. Council requested the Business and Community Development Committee (BACA) meet prior to the June 12, 2012, regular Council meeting to further discuss these concerns and questions and give Staff direction on changes or amendments to the trust indenture document.

One question raised was what could be accomplished by NEDA that cannot be accomplished by Council? Mr. Bryant said there are State restrictions on municipalities to fund long term debt and municipalities create a public trust to use as a tool to allow municipalities to identify a revenue stream then pledge that revenue stream to pay for long term debt. He said, in the past, most trusts were Industrial Trust Authorities, but the more modern application is Economic Development Trust Authorities because they focus on employers other than industrial employers.

What other trusts does the City have a beneficial interest in and how are they similar or different to the proposed NEDA? Mr. Bryant said Norman trusts include the Norman Municipal Authority (NMA) created in 1965; Norman Regional Hospital Authority (NRHA) created in 1969 and amended in 2000; Norman Utilities Authority (NUA) created in 1970; and the Norman Tax Increment Finance Authority (NTIFA) created in 2006. He said the City Council appoints trustees to the NRHA, but Councilmembers serve as trustees on the other trusts.

What are the differences in powers? Mr. Bryant said the most restrictive language is in the NMA trust which is used for projects related to the Westwood Golf Course and the Transfer Station and its purposes include management of utilities which are for public use, including, but without limitation, water, sewer, garbage, and trash disposal facilities. He said the broader language is in the NTIFA, which was created for the University North Park Tax Increment Finance District (UNPTIF), and the purposes stated include implementing the Local Development Act, stimulating economic growth, promoting adequate housing, providing for transportation enhancements, and performing all powers authorized by industrial and economic development statutes. He said in an effort to make the trust document endure over time, trust documents have been drafted with broad language and broad powers to make sure the City does not hamper itself in the future if there is a project that comes forward and then finds the trust language is too narrow.

Can the existing authorities engage in economic development duties envisioned for the NEDA as it has been proposed? Mr. Bryant said language is probably not broad enough in the older trusts as they are limited to specific purposes than the more modern trusts. Bond Counsel reviewed the trusts and felt that the NTIFA does expressly contemplate economic development activities and initiatives. He said language drafted in the NEDA is virtually identical to the NTIFA. Mr. Smith said the NTIFA has broad language, but the UNPTIF focuses financing for Tax Increment Finance Districts (TIF) purposes because it implies that TIF revenues are being used as security or pledge of revenues for the financing. He said no other economic development projects have been done through a TIF Authority other than where there was a TIF involved. He said when TIF is the proper name of the authority, that implies some type of TIF revenues are used as security of collateral.

Councilmember Kovach said there had been discussion regarding changing the name of the NTIFA and asked why that was problematic. Mr. Ellis said to make any amendment to a trust indenture, you have to have 2/3 majority approval of the entity that is making the change and 2/3 majority approval of the beneficiary. If there is any outstanding debt or long term contracts in place, you would have to have consent of those other parties involved. He said it is a procedural thing that would take quite a bit of time. He said if the City is involved in a competitive

type process, as with General Obligation Bonds, a 2/3 majority approval is needed, but typically, on a public trust financing project, competitive bidding is waived, which requires a 3/4 majority approval. He said when the trust authority was named NTIFA, everyone was contemplating TIF Districts would be the primary mission and could be easily used for other TIF Districts.

Councilmember Kovach asked if it was correct that the NTIFA will exist even after the TIF is over unless dissolved. Mr. Bryant said that is correct, it can be dissolved once the trust purposes are completed so tying the NTIFA and the TIF with a project plan that outlines the goals of the project plan helps define when the purposes of that trust will be completed unless it is expanded to use for projects that are other than TIF related projects. Councilmember Lockett asked if you dissolve a TIF when all projects are completed and no more money is owed and Mr. Bryant said that can be done, but it will take action to dissolve it. Mr. Ellis said a trust can be held dormant for a period of time. Mr. Bryant said trusts are really financial tools and if the City has a project that comes forward, the tool is ready to use, but if there is not a project, the trust lies dormant.

Councilmember Kovach said in the public forum there was a desire for an additional statement of purpose for NEDA and asked if the statement of purpose should be put in the trust document or the resolution that creates the trust. Mr. Bryant said the statement of purpose can be in either place and there have been discussions regarding the appropriate avenue to place criteria for the Advisory Board and trust and purpose statements. He said the ultimate control will be City Council as the trustees in any new public trust that comes forward. He said there will be no debt issuance without Council approval even if there were a separate funding source. Councilmember Dillingham said she would be interested in putting the state of "philosophy" regarding economic development and the criteria specifically for employers in a place where it will apply to any new economic development authority to avoid having to create a trust every time the City wants to do a project. She said it is her belief the City should have an Advisory Commission that understands how they are to work with all economic development and to have a philosophy in respect to economic development and creation of jobs that would apply as an umbrella over anything the City does and have the trust indenture be as general as possible so it will be a tool that can be used, but other umbrella provisions would still apply.

Councilmember Lockett asked what conflicts Bond Counsel sees regarding trustees being Councilmembers as well as being the ultimate decision makers. Mr. Smith said Councilmembers, as elected officials, should always be the trustees of these types of authorities, and would have ultimate responsibility not only in making the decisions on debt, but in the preliminary analysis, discussions, planning, etc. Councilmember Kovach asked if Mr. Smith saw a conflict of interest in being a Councilmember and a trustee and Mr. Smith said it is all within the City's purview so he does not see a conflict because everything the Council tries to do is in furtherance of the mission and benefit of the City. He said there may be occasions where the Council may or may not decide to do something that may affect other departments like utilities, but the Councilmembers are going to have the ultimate fiscal responsibility as well as policy responsibility to make the decisions in the best interest of the City. He said there are trusts in eastern Oklahoma that, because of Charter provisions, have a utility authority that is not the Council, but are appointed by the Council which creates issues for funding. Councilmember Quinn asked Councilmember Lockett if there were specific examples she was concerned about and Councilmember Lockett said the example of Norman selling water to Goldsby. She said she understood it was a good financial decision, but because of public opposition it was voted down. She said her concern is that in Norman, which has tremendous public input, she can see more problems from the pressure of people who do not want Council to enter into good, sound, financial deals just because it is about building and growth. Mr. Ellis said you substantially limit the use of the tool if you have a separate board that is not concerned with public response to what actions they take, but the board will be very limited. He said it makes sense for Council to sit on both sides and be in control over decisions from the beginning. Councilmember Dillingham said Council will always have to deal with decisions that are popular or unpopular with the public, but public trusts are set up for the benefit of the public and Council sits in their elective seats making decisions for benefit of the public.

Councilmember Lockett said another problem would be secrecy and felt most businesses would probably need to be kept confidential until it was brought before the Advisory Commission or Council and asked if that was how it would work. Mr. Bryant said if Council creates an Advisory Board or Commission it would be subject to the Open Meetings Act and posting requirements as any other board or commission, which would eliminate any secrecy. He said there may be confusion as to the actual role of the Advisory Board and the trustees. He said the City has the

Norman Economic Development Coalition (NEDC) and their mission is to recruit potential employers or projects and once they have a potential project, they would bring that project to the City and that is when the trustees and the Advisory Board would come into the picture. He said the Advisory Board would look through the details of the project as people who have experience in banking, finance, commercial law, accounting, etc., to be able to advise the Council on whether or not the project would be good for the City. He said, Council as trustees, still gets to make their independent decision, but would have the benefit to review that project from the Advisory Board. Councilmember Lockett asked if the Advisory Board would compete with NEDC and Mr. Bryant said no, they would be assisting NEDC. He said the Board provides a separate, independent group to review the project that NEDC worked so hard to obtain and is invested in and make recommendations to Council. Councilmember Quinn said it is actually a layered process with the NEDC vetting the project, then the Advisory Board reviewing it, then it would proceed to Council if it was a sound deal and Mr. Bryant said that was his understanding. Councilmember Lockett said that is not clear in the trust indenture and she would like to see language in the trust making it clear that NEDC and NEDA have different missions and NEDA is not replacing NEDC. Councilmember Quinn said the only decision making layer would be City Council.

Mr. Bryant said even if the trust is created a defined revenue stream is needed. He said the debt to be issued has to be marketable. The trust is a tool to be able to work the deal if it is financially feasible and the only way it is financially feasible is if the City can actually sell it in a bond market. Councilmember Dillingham asked Bond Counsel to describe a typical lease financing deal under a trust. Mr. Ellis said NEDC would work out a deal with a company who wants to build a building. He said, historically, there have been a lot of industrial development revenue bonds that were done where a City through a public trust builds a shell building with the idea that they will have a tenant come in and pay lease payments. It is typically done as conduit financing where there is a bond holder and a bank that lends money to the public trust. The public trust will pass those proceeds directly through to the ultimate borrower of the new company who will make lease payments back to the public trust who passes them back through to the lender. He said no revenues or funds of the City have been pledged. He said there are also deals where there has been credit or support given by a municipality and though it can be done there is the question of whether or not it should be done. Mr. Smith said if there are no City revenues or other types of revenues pledged, there is no financial liability to the City if the deal falls through. However, he said a City does not want to be in a situation where an authority has issued debt that defaults. He said there is still no financial liability to the City, but the City would have a black eye in terms of future financing. He said he sees the Advisory Board of people with expertise as being a real assistance to the Council in making the determination that the project is worthwhile.

Councilmember Kovach asked if the best place to outline the Advisory Board would be within the trust or separate from the trust. He said he would like the advice of people who know what they are talking about and whether or not a project is a good deal. He said his reservation is not having anyone on Staff charged with having that kind of knowledge. He said he reviewed the verbatim minutes of the original TIF and was surprised that it was some of the citizens from the business community who were fighting the hardest for the claw backs in the agreements. He said that impressed him because they had a perspective that Staff and Council did not have. He said it turned out to be a very important perspective and this kind of advice is needed if a good deal with quality jobs comes to Norman. He wants someone to be able to say, "There is no way that is going to cash flow. You are going to have an obligation to pay because the citizens of Norman would not want the Council not to pay." He said he would like to discuss that in a future meeting.

Councilmember Gallagher asked how easy it would be for the City to use bonds instead of TIF money and utilize the NTIFA. He believes the City is seeking something new they do not have to have. Mr. Ellis said the City could use the NTIFA as it stands and issue NTIFA revenue notes. Mr. Smith said if the NTIFA issues debt, then that implies that TIF revenue are securing the debt, but if the City used the existing NTIFA to issue debt that would be secured otherwise with non-TIF revenues, then it is just a clarity issue that TIF revenues are not securing that debt. Councilmember Dillingham asked if that kind of confusion would affect the marketability of the project and Mr. Smith said the City would have to explain to people and not be in the position of misrepresenting what the security is.

Councilmember Lockett said one of the arguments she was given for having a new trust was simply that it sends the message that Norman is open for business whether it is used or not. It tells businesses that Norman is more accommodating. Mr. Smith said there are over 300 trusts in Oklahoma and they are called Economic Development Authorities when the public trust is created. Councilmember Dillingham said that does not mean the City would not use the NTIFA if another TIF were to be implemented. She felt it is better to have specific tools.

Councilmember Gallagher said an Advisory Board blended into the TIF Oversight Committee of influential people would not require a new committee. He said he would somehow incorporate the trust idea into the trust the City already has or at least make it a consideration before creating something brand new. He said the trust needs to be postponed on June 12th for further discussion on details. Councilmember Kovach said Council should not complicate things by mixing purposes of the trusts. He said he agreed with Councilmember Dillingham that the City has a NTIFA for TIF projects and if you use a TIF authority for development projects it seems there may be propensity in the future for someone to try to extend the lifetime of the TIF. He said there are different tools for different purposes, it does not cost any money to create another trust, and it is quicker, cleaner, and neater.

Mr. Bryant suggested bringing the standard form trust document to Council with Council acting as the trustees, eliminate the Advisory Board language from the document, and work on it separately as an ordinance. He said Staff just needs direction. Councilmember Quinn said it seemed to be the consensus to go forward with the trust indenture as Mr. Bryant just stated because it has to be on the June 12th agenda. Councilmember Dillingham said she would like to see a draft ordinance creating an Economic Development Commission with the enumerated disciplines added so there is a broad base of expertise. She said she would also like to have people in the business community with those qualifications involved in the discussions. Councilmember Kovach said he would like to see the same charge as NEDC placed in the trust, which is quality jobs emphasized in the TIF incentives and maybe even emphasis on green jobs.

Mr. Bryant said if an ordinance was drafted there would be a First and Second Reading with First Reading being June 26, 2012. Councilmember Kovach asked why the creation of the Advisory Board had to be brought forward as an ordinance instead of a resolution and Mr. Bryant said it can be done by resolution, but there was a suggestion to do it by ordinance because Chapter IV talks about all the boards and commissions and rules of meetings.

Councilmember Gallagher said he did not want to rush the trust and felt caution needs to be taken. Councilmember Quinn said BACA has worked on the trust for nine months and should carry on with the timetable.

Councilmember Kovach said he was not clear on the charge to Staff and Mr. Bryant said Staff would bring the trust back in the same trust document form used for the NTIFA, but with Council as the trustees and remove the Advisory Board language to be discussed at a future meeting. He said he could have a draft ordinance ready by next week for the Advisory Board, but the earliest it could go before Council would be the end of June.

Ms. Joy Hampton, [The Norman Transcript](#), said her concerns included Council's workload and not having access to information for the public. She said if NEDC has a project and brings it to the Advisory Board she believes, at that stage, it will be discussed in an Executive Session. She said if the Advisory Board felt it was a project worth pursuing then they would bring it forward to the Trust, which will mean another Executive Session. She said there would be a lot of Executive Sessions before it came to the public and she did not know if that would be different if the Advisory Board consisted of bankers and financial experts that were the trustees. She said there are five-hour long Council meetings and asked how the City could keep the information transparent and how Council will manage the additional workload if Council act as the trustees. Mr. Bryant said the trust will not meet unless there is a project coming forward. She said the Advisory Board will be subject to the Open Meetings Act, Open Records Act, and will only be able to go into Executive Session for those reasons specified in the statute. Ms. Hampton said the broadest section for going into Executive Session is on economic development.

Mr. Steve Ellis, interested citizen, asked when the Advisory Board makes its judgment about whether to go forward, what is their charge; would they be figuring out an economic cost benefit analysis or a broader range of community values? Mr. Bryant said that can be worked out when BACA discusses board criteria and purpose.

Ms. Cynthia Rogers, Economics Professor, said her concern was with the "Rule of Three" things that can come out of Committee to Council without enough time for people to digest the information. She said this subject snuck up on her and she would have been very interested in taking part in the discussion and is worried about citizens vetting time between when the deal is presented and when the Council would vote on it. Councilmember Kovach said it is important to realize that all the meetings have been subject to the Open Meetings Act and citizens that want to be informed about meeting agendas can contact the City Clerk's Office and he did not believe that any function of the City should be put under greater or lesser scrutiny than another.

Mr. Fred Pope, interested citizen, said the original NTIFA has all the general power of the new trust and it would seem to be easier to amend the name and move forward with that. He said his concern is human trust in general and when one reads Article IV the powers stated are so all encompassing it is as if it is another constitution. He feels strongly that items in Article IV need to be greatly abrogated in different ways. He sees a strong possibility of something like light rail being implemented under the terms of transportation in Article IV, which could be snuck in and the people would be bullied into acceptance.

Ms. Jacy Crosbie, interested citizen, said the trust is being pushed on residents very quickly. She said as a candidate of City Council she attended meetings and had no idea the trust was coming forward until the day before the Public Forum when it was put on the website. She said Councilmember Ezzell had said the BACA meeting would be a time where he would bring a chart and red line out the parts of the trust not wanted and she is disappointed that did not happen. She said now by consensus, the trust will come before Council on June 12th and the residents of Norman had not had time to see the document. She said the ultimate accountability will be to the City Council via the citizens of Norman who vote.

Items submitted for record

1. Memorandum dated May 31, 2012, from Jeff H. Bryant, City Attorney, to Honorable Mayor and Councilmembers

Item 2, being:

MISCELLANEOUS DISCUSSION.

None

The meeting adjourned at 10:08 a.m.

ATTEST:

City Clerk

Mayor