

CITY COUNCIL PUBLIC FORUM MINUTES

May 29, 2012

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a public forum at 5:30 p.m. in the Municipal Building Council Chambers on the 29th day of May, 2012, and notice and agenda of the meeting were posted at 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 Dillingham, Ezzell,
Gallagher, Kovach, Lockett, Quinn,
Spaulding, Mayor Rosenthal

ABSENT Councilmember Griffith

Item 1, being:

PRESENTATION AND DISCUSSION REGARDING A TRUST INDENTURE CREATING THE NORMAN ECONOMIC DEVELOPMENT AUTHORITY.

Ms. Kathryn Walker, Assistant City Attorney, said the Norman Economic Development Authority (NEDA) would be a public trust, which is an entity that creates a fiduciary relationship in which trustees hold the title to property and act as authorized in relation to the property for the benefit of another. She said the trust provides a tool to review/vet requests for economic development funds and would provide an avenue to engage in promoting economic development in Norman without putting the City at risk for debts, loss, or liability. She said the City currently has four public trusts, the Norman Municipal Authority (NMA) for the golf course and transfer station; Norman Utilities Authority (NUA) for water and sewer projects; Norman Regional Hospital System Authority (NRHSA) for the hospital; and Norman Tax Increment Finance Authority (NTIFA) for the University North Park infrastructure, Legacy Park, and economic development projects.

Ms. Walker said Oklahoma uses public trusts in a variety of ways and highlighted ways that trusts have been used for economic development in Broken Arrow and Cleveland County. She said in Broken Arrow the largest private employer, Flight Safety International, used a public trust to keep 675 jobs and allow for expansion of up to 1,000 jobs by offering a 17 acre site with a 99 year lease and provided \$6.6 million for infrastructure improvements and economic incentive. Cleveland County Industrial Authority provided funds for local companies, Hitachi for expansion and Astellas for facility construction through the issuance of revenue bonds.

Ms. Walker said, in Oklahoma, public trusts exist for the public benefit with enumerative powers, which have all been recognized as a valid exercise of power for the furtherance and accomplishment of a proper public function or purpose. Public trusts exist as legal entities separate and distinct from municipal beneficiaries; act on behalf of and in furtherance of a public function; are created for the purpose of enabling long term financial obligations; and simplify the sale of real or personal property. She said the trustees of a public trust manage and control the daily affairs of the trust including financing, investing, and contracts.

Ms. Walker said, under Oklahoma law, any time a public trust issues debt or enters into financial obligations for real or personal property, the beneficiary, which would be the City of Norman, would be required to provide 2/3 approval of the governing body. The public trust must file an annual financial report with the City of Norman and conduct annual audits to be filed with the State Auditor and City of Norman. The public trust must comply with the Competitive Bidding Act, Open Record Act, and Open Meeting Act.

Ms. Walker said the City of Norman has been discussing the creation of a public trust since August 2011, and provided an overview of those meetings. She said when the trust indenture went to Council on May 8, 2012, it was postponed until June 12, 2012, to allow public discussion. She said the trustee composition in the original draft trust indenture consisted of five voting trustees, one designated by the Norman Economic Development Coalition (NEDC); one designated by the Norman Chamber of Commerce (NCC); and one member at large with a background in banking, commercial finance, law, or accounting and two Councilmembers. All appointments had to be approved by a majority of City Council and bound by the Ethics Policy.

In December 2011, Mr. Marc Nuttle, Economic Development Attorney, shared with the Business and Community Affairs Committee (BACA) his experiences with economic development and economic development trusts and his recommendations were incorporated into the draft trust indenture. His recommendations were to have five trustees with one representative from NEDC and NCC and three members at large with specific expertise related to economic development. In February, BACA met to discuss concerns expressed by BACA members that Councilmember(s) would not serve as trustees, issues regarding trustees' authority for eminent domain, and conflicts of interest issues. A draft trust indenture was reviewed by Council on May 8, 2012, that included two Councilmembers being appointed as ex-officio trustees, additional language requiring eminent domain be approved by a majority of the Council, and additional language requiring trustees to follow the City of Norman Ethics Policy to alleviate conflicts of interest.

The trust indenture was revised on May 15, 2012, as follows:

- Trustees are the members of the Council
- Trustees are advised by the Economic Development Advisory Board
 - Seven members – one nominated by NEDC, one nominated by Chamber, and five at large with background in banking, commercial finance, law, or accounting
 - All appointments must be approved by a majority of City Council
 - Three year terms
 - Suitable and appropriate economic, business, financial, legal, and community development expertise
 - Advisory Board members subject to same requirements as other appointments (Ethics Policy, removal, cannot miss more than 3 consecutive meetings, etc.)
- Trust purposes modified to exclude powers related to health care services and facilities to address objection raised by the Norman Regional Hospital System Board

Ms. Walker addressed questions about the difference between the NEDC and NEDA. She said the NEDC is a coalition of Moore-Norman Technology Center, City of Norman, University of Oklahoma, and Chamber of Commerce that work together to recruit employers to Norman. NEDA would not recruit employers to Norman, but provide a financing vehicle, if needed, after a project is identified. Another question addressed is why the City cannot use an existing trust authority for the same purpose and Ms. Walker said an existing trust can be used for the same purpose; however, in practice, each of the City's trust authorities have confined their operations to specific purposes. She said, when asked, the City's bond counsel stated that although existing authorities could be used, it could needlessly confuse future financing by expanding operations beyond specified purposes.

Councilmember Kovach confirmed there is a specific project in mind that would benefit from a trust at this time and asked Ms. Walker to explain why the City was discussing this now and Ms. Walker said the process of creating a trust has taken almost a year and the City is discussing it now so a trust would be created if and when a specific project comes forward.

Councilmember Kovach asked Ms. Walker to explain why the City needs NEDA for Norman if Cleveland County has one. Ms. Walker said Cleveland County has been effective for some Norman projects, but Cleveland County is working for the betterment of the County as a whole so they are working with employers who may locate in other cities within Cleveland County and not specifically Norman.

Councilmember Kovach asked why there is no identified funding source and what the implications of that might be and Ms. Walker said an identified funding source would have to be taken care of through the budgeting process or through a voter approval process. She said the City is just trying to establish the trust for future needs of economic development.

Councilmember Dillingham said when Mr. Nuttle spoke to BACA, it was his opinion the trust would function better with the trustees not being members of Council. She asked if there were any types of projects that could be done with the trust if the trustees were not Councilmembers that could not be done with the trustees being Councilmembers. Ms. Walker said no, there would only be the conflict of interest issue, but other than that there is nothing that would prohibit trustees from working on any type of project. She believed Mr. Nuttle's concern was about politicizing the economic development process and insuring that people were in place that had experience in economic development and financing that could analyze costs and benefits of projects.

Councilmember Kovach said, currently, the City has authorized \$16 million in economic development incentives in the University North Park Tax Increment Finance District (UNPTIF) and asked if a project were to come forward, what would the Council have to rely on as far as analysis of the quality of the project. Would that information come only from Staff? Ms. Walker said if there are businesses coming into Norman for Tax Increment Finance District (TIF) incentives, they would have to be located in the University North Park (UNP). She said NEDC has purchased 30 acres with an option to purchase an additional 30 acres at a below market rate for that purpose. She said when a business comes forward, NEDC will typically work with that business with City Staff providing support so input could come from NEDC, City Staff, and if outside people were needed, the City could bring those people in as well. Councilmember Kovach asked if businesses coming in under NEDA would be shepherded by NEDC and Ms. Walker said NEDC is the entity that would recruit the businesses and NEDA would be there to facilitate financing, land purchases, etc. Councilmember Kovach said when you are shepherding a project you are working on a deal and may not have the same perspective as someone who is separate and looking at the whole picture. Ms. Walker said the whole idea of the trust is to provide an independent analysis of things such as costs versus benefits and trustees would be people qualified to make those assessments and bring that information forward. Councilmember Kovach said Council has asked for that type of information in the past, but the City does not have the resources to provide an independent analysis of a proposed project or contract and Ms. Walker agreed, and said the City does not have anyone on Staff dedicated to economic development.

Mayor Rosenthal said the NTIFA has overseen the UNPTIF, but the document that sets up the NTIFA makes no specific mention of the UNP or any specific TIF and Ms. Walker said that is correct. Mayor Rosenthal asked if the only reason UNPTIF cannot be used is because it might be confusing. Ms. Walker said, according to the bond counsel, the financing done with NTIFA is based on a certain revenue stream so it could get confusing if used with another revenue stream. Mayor Rosenthal asked if the City would need an authority for every TIF established and Ms. Walker said not necessarily, it was just something the bond counsel urged Staff to be cognizant of when mixing revenue streams. Mayor Rosenthal asked if there was anything the NEDA could do that the NTIFA could not and Ms. Walker said no, the only difference in NEDA would be the additional requirements placed on eminent domain, trustees, and the Ethics Policy but other than that they are basically the same.

Mayor Rosenthal read some questions from the public. How could Council provide both roles of NEDA trustee and Councilmember, as that can include conflicts of duty as well as an overload for the Councilmembers? Ms. Walker said currently City Council acts as trustees of their different authorities on the same agenda at a single meeting, not separate meetings so it would be the same with the NEDA. What is the advantage of a trust over having an Economic Development Advisory Board that would have some powers proposed by the trust, but be more limited and work or interface directly with Council? Ms. Walker said the primary benefit of a trust and why cities often use trusts is that trusts allow you to enter into long-term debt and protect the City if the financing falls through. Councilmember Spaulding said in the event that something were to fall through and the City was insulated from covering those losses, would there be a moral or ethical expectation placed on the City to go ahead and cover those losses and were there any examples of that taking place. Ms. Walker said it has not happened in Norman and in the NTIFA there have been financing deals where the bank wanted the City to guarantee the debt and the City has said no because the Council does not want to put the City at risk for that debt. She said there is not a legal obligation, but Council would have to decide if there is a moral or ethical obligation.

Councilmember Spaulding asked what types of employers NEDC recruits and Ms. Walker said they do not recruit retail. She said they recruit technology and industrial type businesses. She said NEDC has a policy in place that dictates a minimum threshold for companies they recruit. Mr. Don Wood, Director of NEDC, said NEDC looks at what a company does and there are certain types of companies such as heavy industrial that NEDC does not think would fit into Norman's quality of life. He said NEDC looks at a minimum wage of at least \$12.50 per hour as an average wage for the company plus they have to pay health benefits. He said NEDC looks at companies hiring college graduates and tries not to recruit one company on top of another to keep diversity in the community. He said you cannot keep a business from coming into the community, but NEDC does not actively recruit them if they do not meet the criteria that fits Norman.

Councilmember Spaulding asked if the Charter was amended to require a super majority vote of Council to execute eminent domain how would that affect the trust and Ms. Walker said it would affect trust actions going forward.

Councilmember Ezzell said the Committee discussed changing the name of NTIFA to NEDA and bond counsel had raised an issue regarding the requirement of obtaining approval from bond holders that currently exist. He asked if that was a significant reason for moving forward with a separate trust authority. Mr. Jeff Bryant, City Attorney, said trust indentures require consent of bond holders if there is outstanding debt to make even moderate changes to the trust indenture including changing the name. Mayor Rosenthal said if there was a new TIF District created under the NTIFA, would there be a requirement in the new district to go to the bond holders of a previous district for approval. Mr. Bryant said if a new district were created, a new authority would probably need to be created. He said if it is a sales tax TIF or ad-valorem TIF then that revenue stream would be a revenue stream of additional tax revenues generated within that TIF. He said the bond counsel's advice is to create a separate public trust to deal with revenue streams from the different TIF district. Mayor Rosenthal said that would mean every TIF district created would require a new authority and Mr. Bryant said it would not be required, but is the advice of the City's bond counsel.

Items submitted for the record

1. Memorandum dated May 15, 2012, from Kathryn L. Walker, Assistant City Attorney II, through Jeff H. Bryant, City Attorney, to Honorable Mayor and Councilmembers
2. Draft Trust Indenture Creating the Norman Economic Development Authority dated May 8, 2012
3. Revised draft Trust Indenture Creating the Norman Economic Development Authority dated May 15, 2012
4. City Council Business and Community Affairs Committee minutes of August 4, September 15, October 6, November 3, and December 1, 2011; and January 5, February 2, and March 1, 2012
5. City Council Special Session minutes of March 27, 2012
6. PowerPoint presentation entitled, "Norman Economic Development Authority Public Forum," May 29, 2012
7. PowerPoint presentation entitled, "NEDA Public Forum," by Stephen Ellis, May 29, 2012
8. PowerPoint presentation entitled, "Perspectives on Proposed Norman Economic Development Authority," by Cynthia Rogers, Ph.D., Associate Professor of Economics
9. PowerPoint presentation entitled, "Norman Economic Development Trust (NEDA) - The Opposing View," by Jim Harvey
10. Petition supporting the Creation of the Economic Development Trust Authority for Norman submitted by John Woods, Director, Norman Chamber of Commerce
11. Amended Trust Indenture Creating and Recreating the Ponca City Development Authority submitted by John Woods, Director, Norman Chamber of Commerce
12. Trust Indenture for Ardmore Industrial Development Corporation submitted by John Woods, Director of Norman Chamber of Commerce
13. Economic Development Trust Authority Position Statement submitted by Stephen Koranda, Director, Norman Convention and Visitors Bureau

Participants in discussion

1. Ms. Kathryn L. Walker, Assistant City Attorney
2. Mr. Don Wood, Director, Norman Economic Development Coalition, proponent
3. Mr. Jeff Bryant, City Attorney
4. Ms. Joy Hampton, Norman Transcript, asked questions
5. Mr. Stephen Ellis, 633 Reed Avenue, NEDA development is not just economics – exclusive focus on business is bad idea – having Councilmembers as trustees makes NEDA more accountable
6. Mr. Mark Campbell, Post Office Box 3053, concerned about meeting structure and format for BACA meetings – access to information
7. Mr. Jim Stanley, 3922 Pine Tree Circle, concerned about how this will affect other businesses. Financial information on UNPTIF and NEDC should be readily available
8. Ms. Cynthia Rogers, 633 Reed Avenue, need to look at cost versus benefit – development goals not well conceived, powers are sweeping and vague and duplicates existing authority
9. Ms. Jacy Crosbie, 204 Mountain Oaks Drive, feels eminent domain should require 2/3 vote of Council – concerned about Article IV – too broad – who is responsible?
10. Mr. Jim Harvey, 321 84th Avenue N.E., trust will have unintended consequences, excessively broad scope, vague terminology – NEDA forms a shadow government
11. Ms. Jeanette Coker, 620 East Main Street, should let economic development develop naturally

Participants in discussion, continued:

12. Ms. Susan Laird, 1417 Garfield Avenue, concerned about Article IV – too vague and too broad – feels Article IV is a statement of values – environmental ethics problems
13. Mr. Trey Bates, 3720 Timberidge Drive, supports creation of trust – good for business
14. Mr. Fred Pope, 1501 Navajo Road, smacks of control – irresponsible spending
15. Mr. John Woods, Executive Director of the Norman Chamber of Commerce, 4104 Castlerock Road, supports creation of trust – provided examples of other cities utilizing economic development trusts – submitted petition from 157 Chamber members supporting the trust
16. Mr. Jerry Lang, 1909 Barrington Drive, NEDA could make it harder to get businesses
17. Mr. Ben Alpers, 208 Chautauqua Avenue, NEDA trust is not the proper tool for economic development – creates tunnel vision – how will it change development in Norman – Council should not approve
18. Mr. Ron Williams, 1732 Crestmont Avenue, protestant
19. Mr. Mike Fowler, 4701 Cloudcroft Drive, supports creation of trust
20. Ms. Mallory Harvey, 381 84th Avenue N.E., unintended consequences – too broad
21. Mr. Edwin Kessler, 1570 Rosemont Drive, unnecessary – does not understand the NEDA directive and why it is needed
22. Ms. Denise Personette, 18661 320th Street, concerned about regulation on businesses
23. Mr. Mark Nanny, 1815 Lakehurst Drive, supports economic growth, but must be planned, organized growth – need more accountability
24. Ms. Robin Allen, 6 Bingham Place, supports creation of trust as small business owner
25. Ms. Mary Francis, 850 C Cardinal Creek Condos, urged Council to check background of Marc Nuttle
26. Mr. Stephen Koranda, 2424 Springer Drive, Director of Norman Convention and Visitors Bureau (NCVB), feels economic growth benefits the community – submitted statement from NCVB Board
27. Mr. Gail Poole, 705 Tiffin Avenue, concerned NEDA discussion made it this far – not sure it is needed
28. Mr. Stephen Tyler Holman, 1030 South College, not convinced NEDA is needed
29. Mr. Mark Herman, 809 Peppertree Court, not opposed to growth but wants smart growth – no blank check

Councilmember Ezzell said he has heard incredible amounts of misinformation and inaccurate statements and he feels some comments need a response. He said some of the common themes are haphazard, rushed, and lack accountability and transparency. He said the trust process was vetted for almost nine months in Committee meetings, was discussed at a City Council Study Session, and is now being discussed in a public hearing. He said he also heard that the NEDA motivations are for diversions of public funds, blank checks, and shadow government, but the true motivation is jobs. He said Norman's single largest employer is government and that is not a diversified economy. He said he wants to see Norman's economy diversified and grow jobs beyond government. He said there is no blank check; the public trust authority is based on a number of other trust authority documents and other public trust authorities within the City of Norman. As far as the lack of accountability, the trust document was modified to allow Councilmembers as trustees to allay those concerns. He said Council always had the ultimate control because approval of any debt required two-thirds vote of Council; however, that was not good enough so the document was modified to make sitting Councilmembers trustees of the authority.

Councilmember Ezzell said the reason to create public trust authorities is to insulate the City and public treasury from economic development projects so that City assets are not responsible for private enterprise. He said revenues of a project are what gets worked out to create a revenue stream for bonds to be sold in the private capital markets. The idea of having an advisory board of trustees with technical backgrounds was purely and solely for the purpose of assembling a panel of capable people who are truly qualified to evaluate the economic and business merits of a project, not quality of life issues. He said everything done by NEDA will go to City Council and the public for comment so there is definitely accountability and transparency. He said the current debate is creation of the trust authority to further economic development, not its funding sources. He said he would like to see the May 15th draft come to Council on June 12th and Councilmember Kovach agreed. Councilmember Kovach suggested adding the City's expectations of NEDC to the trust indenture and said the BACA could discuss those expectations in their next meeting. Councilmember Ezzell said BACA meets June 7th and he would not be opposed to the Committee establishing a list of expectations.

Councilmember Gallagher said he had reservations regarding Article IV and the over-reaching, over-encompassing powers of the trust. He said he would like to see some trimming of Article IV to specifically look at businesses akin to NEDC goals. Mayor Rosenthal said legislatures, in the wake of the Kelough decision, are considering prohibiting communities from taking property for housing purposes and she would like Council to keep State laws in mind during discussions.

Councilmember Spaulding said, in the event a government entity were to purchase property and provide a lease back, would the ad valorem taxes on that property be paid and Councilmember Ezzell said, typically, a public trust authority created by the City of Norman does not pay ad valorem tax. If the public trust authority remains the owner of the property and leases it to a company, property taxes would not be paid; however, if the lease has a bargain purchase option (the company has the option to purchase the property at fair market value at the expiration of the lease) then that would require payment of ad valorem taxes.

Councilmember Spaulding agreed with Councilmember Gallagher about the need for cleanup of language in Article IV, specifically references to low income housing. Mayor Rosenthal asked that BACA re-examine the expertise requirements of trustees and who appoints them under Article IV. She said there is no reference in the trust indenture that the advisory board is subject to the Open Records Act or Open Meetings Act and requested language be included to make that clear.

Councilmember Gallagher said the Norman Regional Hospital Board has stated they do not have to record their open meetings and asked Mr. Bryant to find out why they are not required to record meetings.

Councilmember Lockett said she would like more discussion on appointing Councilmembers as trustees as she feels that would cause conflicts of interest and should be explored more thoroughly. She felt it would be difficult for Councilmembers to make the best decisions for the trust while dealing, as a Councilmember, with constituents strongly against those decisions. She said being a trustee would also be time consuming and Councilmembers have a full plate already. Councilmember Quinn agreed that further discussion is needed regarding the role of Councilmembers as trustees.

Councilmember Spaulding said he was concerned there was not a lot of time for the public to review changes that may be made by BACA on June 7th then placed on Council's agenda on June 12th for consideration. Mayor Rosenthal said the draft trust indenture was postponed on May 12th to June 12th so it has to be on the agenda, but can be postponed if Council feels the public has not had adequate time to review the draft. Councilmember Kovach said citizens should have time to review items; however, there is a process and the draft trust indenture can be tweaked at the June 12 meeting based upon BACA recommendations and public comments. Councilmember Ezzell suggested posting the May 15th version of the draft trust indenture on the website, and then post any red line version after the BACA meeting.

The meeting adjourned at 8:53 p.m.

ATTEST:

City Clerk

Mayor