



Legislation Details (With Text)

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On agenda:	12/6/2022	Final action:	12/6/2022		
Enactment date:	12/9/2022	Enactment #:	RES-22-00817		
Title:	Authorizing the Mayor and City Clerk to execute a development agreement and authorizing a funding appropriation in the 2023 Capital Budget to fund a \$2,350,000 Tax Incremental Finance Loan to WHPC Acquisitions, LLC or its assigns. (12th AD)				
Sponsors:	Satya V. Rhodes-Conway				
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Attachments:	1. Gardner TIF Report 10-24-22.pdf				

Date	Ver.	Action By	Action	Result
12/6/2022	1	COMMON COUNCIL	Adopt	Pass
11/28/2022	1	FINANCE COMMITTEE	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
11/1/2022	1	COMMON COUNCIL	Refer	Pass
10/21/2022	1	Economic Development Division	Referred for Introduction	

Fiscal Note

This resolution would authorize a \$2,350,000 loan to WHPC Acquisitions LLC or its assigns ("Developer"). Funding for this project requires approval of an upcoming amendment to the 2023 Executive Capital Budget. TIF funding is also contingent upon the creation of a new TID #52 (E. Washington and Stoughton Rd.) in 2023.

The Project consists of approximately 245 affordable apartment units, 4,000 square feet of commercial space and 282 parking stalls ("Project"). The TIF Loan would be repaid through incremental taxes generated by the Project and represents 55% of the present value of all incremental taxes anticipated from the Project over the proposed TID's 27-year life.

While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 9 years, the Developer is required to guaranty a minimum payment if sufficient future tax increment is not available.

The increment guarantee is secured by a subordinated mortgage on the property. The TIF Loan also requires that Developer be prohibited from selling or transferring the Property prior to repayment of the TIF Loan. If Developer sells or transfers the Property to a tax-exempt entity, Buyer shall pay an annual payment in lieu of taxes (PILOT) in the amount of the property tax paid as of the date of sale, frozen, until 2050.

Title

Authorizing the Mayor and City Clerk to execute a development agreement and authorizing a funding appropriation in the 2023 Capital Budget to fund a \$2,350,000 Tax Incremental Finance Loan to WHPC Acquisitions, LLC or its assigns. (12th AD)

Body

WHEREAS the City of Madison is in the process of creating a new TID #52 (East Washington and Stoughton

Rd) during 2023 and;

WHEREAS the intent and purpose of the Project Plan, among other things, is to eliminate blighting conditions and encourage development of a wide range of commercial and housing options and attract and retain business and employment in the City of Madison; and

WHEREAS, WHPC Acquisitions LLC, or its assigns, ("Developer") has proposed to construct 245 affordable housing units on the Property at a total estimated development cost of approximately \$72,865,600 ("Project") located at 3401 E. Washington Avenue, formerly known as the former Gardner Bakery property in the City of Madison and within the boundary of a proposed to the TID #52 (East Washington and Stoughton Rd) boundary ("Property"); and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Project and has determined a gap for to be approximately \$2,350,000 such that, but for TIF assistance, the Project could not occur; and

WHEREAS, \$2,350,000 of TIF assistance to Project A represents approximately 55% of the present value of the estimated tax incremental revenues generated by the Project, in conformance to TIF Policy that no more than 55% be made available to a project ("55% Gateway") without Board of Estimates prior authorization; and

WHEREAS, in addition to any other powers conferred by law, the City may exercise any power necessary and convenient to carry out the purpose of the TIF law, including the power to cause project plans to be prepared, to approve such plans, and to implement the provisions that effectuate the purpose of such plans; and

NOW, THEREFORE, BE IT RESOLVED that the City hereby finds and determines that the Project is consistent with the public purposes of Tax Increment Finance Law and the plans and objectives set forth in City of Madison TIF Policy, the City's loan to Developer demonstrates the potential to and encourage development of a wide range of housing options in TID #52, thereby making more likely an accomplishment of the public purpose objectives set forth in the Project Plan, the TIF Law and City TIF Policy.

BE IT FURTHER RESOLVED that funding is subject to the following conditions:

1. The Project. Developer agrees to develop on the Property all of the following:
 - a. Construction of approximately 245 units of affordable housing
 - b. 282 parking stalls
 - c. 4,000 square feet of commercial space
2. Form of Assistance. TIF assistance shall be provided in the form of a 0% loan in the amount of Two Million Three Hundred Fifty Thousand Dollars (\$2,350,000) to the Developer for the purposes of constructing the Project. The TIF Loan to be repaid either through increment or a guaranty payment pursuant to Section 10 herein.
3. Evidence of Financing, Audit and Clawback Provision. Prior to the TIF Loan closing, Developer shall provide evidence of bank financing, grant funds and/or equity in the aggregate amount of not less than \$70,515,600 for Project ("Financing").

Financing shall be evidenced in the form of (i) a bank commitment letter and evidence that Developer has met all of the lender's conditions of financing such as commercial pre-leasing requirements, if any; (ii) a letter of intent from a tax credit investor; and/or (iii) a grant award letter from a nonprofit or governmental entity.

Equity investment shall be evidenced by paid invoices or other documentation of prepaid project costs paid by Developer and/or a financial statement demonstrating Developer's financial capacity to invest equity in

the Project. The Developer's Equity investment may include equity from the sale of Low Income Tax Credits, a cash contribution from the tenant that will occupy the Project, the Developer's contribution of land, and a deferred developer's fee. In aggregate, Developer's equity investment, as established through financing documents shall not be less than the amount of the TIF Loan at closing.

After closing, the TIF Loan shall be used solely for the purpose of funding the TIF eligible portion of the total project costs as stated in the TIF Application. The total project costs estimated therein at approximately \$72,865,600. Upon completion of the Project defined as issuance of a certificate of occupancy for all elements of the Project, Developer shall provide the City with a cost certification of the total Project Cost and Financing ("Audit"), to the City's satisfaction, for the City's review and approval. If the City does not approve the Developer's Audit of Project Cost, the City may request additional information from the Developer and may perform its own audit of Developer's books and records related to Project Cost and Financing. In the event that the financing gap for Project (which is equal to the amount of the TIF Loan) is reduced by a decrease, as established by the Audit, in the Project Cost ("Audited Actual Cost") and/or an increase, as established by the Audit, in Financing ("Audited Actual Financing"), the following formula shall apply to determine the clawback payment due to the City ("Clawback"):

The Clawback shall be calculated as follows:

1. "Cost Savings" Project = \$72,865,600, minus the Audited Actual Cost; and
2. "Financing Increase" = Audited Actual Financing minus \$70,515,600.

If the sum of (1) Cost Savings and (2) Financing Increase is a negative number, there shall be no Clawback. If the sum is a positive number, Developer shall pay the City Fifty Percent (50%) of such positive number as a Clawback.

Developer's payment of the Clawback shall be applied as a payment to the tax increment guaranty under Sections 10 and 12 below and shall reduce the outstanding amount of the TIF Loan pursuant to Sections 10 and 12 below.

4. Tax Credit Approval. TIF assistance to the Project is contingent upon Developer receiving an award of Section 42 low-income housing tax credits ("LIHTC") from Wisconsin Housing and Economic Development Authority ("WHEDA") in 2023. Prior to closing of the TIF Loan, Developer shall provide the City with a copy of its LIHTC Online Application ("LOLA") provided to WHEDA. The City reserves the right to amend TIF Assistance to the Project in the event that the financial information provided in the LOLA demonstrates that the gap is less than presented in Developer's TIF Application.
5. Disbursement Method. At closing, the City shall disburse the TIF Loan to a title company to be held in escrow. Developer shall have the right to lend a portion of the TIF Loan to the project in phases, secured by one or more notes and mortgages as approved by the City Attorney.
6. 2023 Capital Budget Authorization. Funding for the Two Million Three Hundred and Fifty Thousand Dollar (\$2,350,000) TIF Loan is contingent upon an amendment to the City of Madison 2023 Capital Budget authorizing the expenditure of funds stated herein.
7. TID 52 Project Plan and Boundary Creation. The City shall not make TIF funds available until the date of an approval of a TID #52 Project Plan and Boundary by the TIF Joint Review Board.
8. No TID Project Plan and Boundary Certification. In the event that the TID #52 Project Plan and Boundary is not certified by DOR on or about April 30, 2023, Developer shall be obligated to repay all funds disbursed by the City and used by Developer as a conventional loan or loans, amortized over ten years, together with the costs of issuance and interest on the unpaid principal balance at a rate equal to the rate of the City's borrowing, plus one hundred basis points. Payments of principal and interest shall be made

quarterly. All funds not spent or remaining in escrow shall be returned to the City.

For the Project described herein, Developer shall perform on all requirements of the respective TIF Loan Agreement for the loan funds disbursed to Developer by the City ("City Loan"), including but not limited to the Clawback provision (Section 3), as adjusted for the partial funding, and the Tax Increment Guaranty (Sections 10 and 12). In such event, the City shall credit Developer for the City's portion of annual estimated incremental property taxes levied on the Project, as set forth in the Tax Increment Guaranty provision in Sections 10 and 12, until the City Loan is repaid. If in any year, the actual annual tax levy on the Project is less than the amount set forth in the Tax Increment Guaranty, Developer shall pay the City the annual difference as a guaranty payment. Developer shall repay to the City remaining principal on the City Loan, if any, at its ten-year maturity in 2033. In the event of the TID #52's non-certification, the City shall make its best effort to secure TID certification in 2024 and receive such TID certification by DOR no later than on or about April 30, 2025.

9. Affordable Housing Fund Loan. TIF assistance to the Project is in addition to the disbursement to Developer of \$3,150,000 of City of Madison Affordable Housing Initiative Fund financial assistance to the Project.
10. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing the TIF Loan for the Project shall be repaid by Developer through tax increments generated by the Project and/or cash payments by Developer. A schedule of the projected increment used to calculate the TIF Loan amount shall be attached to the Agreement ("Increment Schedule").
11. Sale to Tax Exempt Entity - PILOT Payment. Developer shall be prohibited from selling or transferring the Property prior to the Developer's repayment of the TIF Loan without the prior written consent of the City (except for transfers made pursuant to foreclosure of senior loan on the Project). If Developer sells or transfers the Property to a tax-exempt entity ("Buyer"), whereupon such ownership renders the Property as property tax-exempt, Buyer shall pay the City an annual payment in lieu of taxes (PILOT) in the amount of property tax last levied as of the date of sale to Buyer, frozen, through 2050. The City of Madison shall share said PILOT in proportion with the overlying taxing jurisdictions. Buyer shall execute a PILOT Agreement and a mortgage in favor of the City in the amount of the PILOT payments ("Buyer's Mortgage") at the time of Buyer's acquisition of the Property. The Buyer's Mortgage and PILOT Agreement shall be released and terminated by the City upon the closure of TID 52. This obligation will be secured by a land use restriction terminable upon closure of TID 52.
12. Security and Personal Guaranty. The TIF Loan shall be evidenced by notes executed by Developer, or its assigns, to the City of Madison in the amount of Two Million Three Hundred Fifty Thousand Dollars (\$2,350,000) bearing zero percent (0%) interest (together the "Note"). Developer shall execute mortgages in favor of the City of Madison securing payment of the TIF Loan (together the "Mortgage"). The City agrees, if necessary, to execute a subordination of mortgage in a form approved by the City Attorney and acceptable to Developer and Developer's lender(s). Developer and its assigns shall cause to be provided a corporate guaranty of Wisconsin Housing Preservation Corp. of the TIF Loan to the Project.
13. Satisfaction. The TIF Mortgage and Agreement shall be satisfied and the Note cancelled via a recordable release upon full payment of the TIF Loan.
14. Affirmative Action MGO 39.02 (9). Developer and its contractors/subcontractors shall comply with all applicable provisions of the Madison General Ordinance (MGO) 39.02 (9), concerning contract compliance requirements. Prior to commencing construction, Developer shall contact the City's Affirmative Action Division to assure that Developer is in compliance with the aforementioned requirements. Developer shall assist and actively cooperate with the Affirmative Action Division in obtaining the compliance of contractors and subcontractors with such applicable provisions of the Madison General Ordinance. Developer shall allow maximum feasible opportunity to small business enterprises to compete for any contracts entered into pursuant to the contract. The Developer understands that it is obligated to

meet the goal set by the Department of Civil Rights, or show best efforts to meet the goal based on documented evidence of efforts.

Furthermore, in order to ensure compliance with the above provisions, Developer and its contractor agree to the following:

- a. The general contractor provide a schedule of values as soon as reasonably possible following the execution of this Term Sheet.
- b. A meeting shall take place before loan closing to set affirmative action goals for the project. Additional meetings may be scheduled at the request of DCR and must be held within 10 days of the request.
- c. At 80% completion, the goal is either met, signed contracts establish that the goal will be met, or documented good faith efforts are shown as to why the goal is not met.

For the purposes of this paragraph, "Completion" shall mean expenditure of total project costs as described in the TIF Application.

15. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
16. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
17. Ban the Box. Developer shall comply with Madison General Ordinance 39.08 related to job applicant arrest and conviction records.
18. Material Changes. At the time of Closing, if any material adverse changes to the size, use or ownership of the Project or Property stated in the TIF Application, including any changes to the number or rent of the affordable units, have been made, this TIF Loan commitment shall be subject to reconsideration by the City. Following Closing, any material change made without consent of the City shall subject the TIF Loan to immediate repayment. Notwithstanding the foregoing, the City acknowledges that the Developer may, with the prior approval of the City, which approval may not be unreasonably withheld, reconfigure the size and use of the Project to address current market conditions (for example, the number and configuration of parking stalls may be increased or decreased, and certain space designated for office use may be converted to retail use).
19. Project Completion. Developer shall guarantee that the construction of the Project will be completed by December 31, 2025. Project completion shall be evidenced by the issuance of a certificate of occupancy. Failure to complete the Project by said date will require payment under the increment guaranty in Sections 10 and 12.
20. Property Insurance. Prior to funding, evidence shall be provided that a property insurance policy of the proper type and amount of coverage to protect the City's participation has been obtained. The policy shall name the City of Madison as an additional insured.
21. Title Insurance. At least fifteen (15) days prior to closing, Developer shall provide a commitment for a title insurance policy of the proper type and amount of coverage to the City. The City shall receive a lender's policy in a form to be approved by the City Attorney, which will require, among other things, an updated survey of the Property. Developer shall be responsible for all lending costs and fees.
22. Environmental Assessment. Developer shall provide the City an environmental assessment of the Property which is acceptable to staff.

23. Automatic Expiration. The TIF Loan shall be null and void in the event that Developer does not commence construction on the Project, as evidenced by issuance of permits for footings and foundations, by June 30, 2023.

BE IT STILL FURTHER RESOLVED that the TIF Loan to the Developer is hereby approved and that the Mayor and City Clerk are hereby authorized to execute a development agreement and other documents as may be necessary to effectuate the transaction, all of which are subject to the approval of the City Attorney.

BE IT FINALLY RESOLVED that a funding appropriation be made in the 2023 Capital Budget to authorize \$2,350,000 of funding to the Project.